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# Presidential Documents

Title 3—

The President

**Proclamation 6495 of October 18, 1992**

## National Neurofibromatosis Awareness Month, 1992

**By the President of the United States of America**

**A Proclamation**

This week we pause to reaffirm our Nation's commitment to the fight against neurofibromatosis, a common genetic disorder that affects the nervous systems of more than 100,000 Americans.

Neurofibromatosis appears in two forms. In the more prevalent form, NF1, masses of tissue grow along nerve pathways beneath the skin or deeper in the body. While most individuals with NF1 experience mild symptoms and few adverse effects on their ability to lead normal lives, some persons with the disorder can be severely disfigured by facial or bodily tumors that may also press against vital organs, causing serious complications such as blindness or loss of limbs. In the disorder's other form, NF2, tumors grow along the nerves responsible for hearing and balance. These tumors, although they are nonmalignant, often result in hearing loss. Both forms of neurofibromatosis are complex and unpredictable, and there is no way to foretell the eventual severity of individual cases.

While many questions about neurofibromatosis remain unanswered, scientists do know that the disorder is caused by a defective gene that changes the way in which normal cells develop and function. Children of a parent who has the defective gene have a 50 percent chance of being born with neurofibromatosis. Spontaneous genetic mutations can also cause NF to appear in a person who has no family history of the disorder. Neurofibromatosis can strike any American, regardless of gender, race, or ethnic background.

Although no cure or means of preventing neurofibromatosis currently exists, recent advances in biomedical research offer encouragement to many people with the disorder. The refinement of diagnostic technologies such as magnetic resonance imaging have enabled physicians to isolate tiny tumors that might otherwise go undetected, thereby helping doctors to identify and track progression of the disease. In July 1990, scientists located the gene associated with NF1 and have been working since to decipher its faulty message—a task that is crucial to finding a cure. Similarly, scientists are drawing closer to locating the gene associated with NF2 and, with each step, hope to design better detection and treatment strategies. Investigators are also exploring the possibility that the genes responsible for neurofibromatosis may play an important role in several common forms of cancer, and scientists hope to study the anatomical and biological characteristics of the disease in a newly identified animal model.

The biomedical research community has taken significant strides toward solving the mystery of neurofibromatosis, and the 1990s, which I have proclaimed as the "Decade of the Brain," hold the promise of even greater advances in the near future. Achieving them is a goal shared by private voluntary health organizations such as the National Neurofibromatosis Foundation and Neurofibromatosis, Incorporated, and by the Federal Government's National Institute of Neurological Disorders and Stroke, as well as other components of the National Institutes of Health, including the National Cancer Institute and the National Institute on Deafness and Other Communication Disorders.

In order to enhance public awareness of neurofibromatosis, the Congress, by House Joint Resolution 422, has designated the month of November 1992 as "National Neurofibromatosis Awareness Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 1992 as National Neurofibromatosis Awareness Month. I invite all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-25710
Filed 10-19-92; 4:28 pm]
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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

[Docket No. 92-096-2]

### Ports of Entry for Certain Plants and Plant Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning foreign quarantine notices by allowing certain plants and plant products to be imported through a plant inspection station at the Orlando International Airport in Orlando, Florida. The addition of the Orlando plant inspection station will ease the workload borne by the plant inspection station in Miami, Florida, and facilitate the importation of certain plants and plant products.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Fons, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

#### Background

The restrictions contained in "Foreign Quarantine Notices, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 through 319.37-14), referred to below as "the regulations," prevent certain tree, plant, and fruit diseases, injurious insect pests, and other plant pests from being introduced into the United States by prohibiting or restricting the importation of certain articles from foreign countries or localities. These prohibited and restricted articles are listed in § 319.37-2 and § 319.37-3 of the regulations.

Section 319.37-14(b) of the regulations contains a list of the approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest and disease risk, may be imported only through ports equipped with special inspection and treatment facilities. These ports, known as plant inspection stations, are indicated on the list by an asterisk.

In a document published in the **Federal Register** on August 20, 1992 (57 FR 37735-37736, Docket No. 92-096-1), we proposed to amend the regulations by adding Orlando, Florida, to the list of ports of entry in § 319.37-14(b). Because the port possesses the special inspection and treatment facilities needed to process restricted articles that are imported under a written permit, we also proposed that the Orlando site, located at the Orlando International Airport, be designated a plant inspection station.

We solicited comments on the proposed rule for a 30-day period ending on September 21, 1992. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule.

#### Effective Date

Mr. Robert Melland, the Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon publication. This rule relieves restrictions on the importation of certain plants and plant products by designating an additional port, at Orlando, Florida, as a port of entry. The Orlando port of entry is also a plant inspection station, so restricted articles that must be accompanied by a written permit may also be imported through the port. This rulemaking will benefit interested U.S. importers, especially those operating in northern Florida.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of a plant inspection station in Orlando, Florida, will facilitate the importation of certain plants and plant products into the United States. The addition of this facility will have a positive, albeit limited, economic impact. The volume of traffic handled by the plant inspection station in Miami indicates that a second plant inspection station in Florida will be utilized by importers. We have no way of knowing exactly how many of them will use the Orlando facility, but we estimate that it will be 20 or more commercial importers, with many of them being small entities. Those commercial importers based in the northern Florida area will realize at least a small savings in transportation costs as a result of the opening of the Orlando facility. The primary impact on the importers, however, will be the increased convenience of having a second plant inspection station in Florida.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State

and local laws, regulations, or policies that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. in § 319.37–14(b), the entry for Florida is amended by adding, immediately after the entry for Miami, an entry to read as follows:

**§ 319.37–14 Ports of entry.**

* * * * *

(b) * * *

### LIST OF PORTS OF ENTRY

Ports with special inspection and treatment facilities (plant inspection stations) are indicated by an asterisk (*).

* * * * *

FLORIDA

* * * * *

* *Orlando*

Orlando Plant Inspection Station, 9317 Tradeport Drive, Orlando, FL 32827.

* * * * *

Done in Washington, DC, this 15th day of October 1992.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 92–25529 Filed 10–20–92; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**RIN 3150–AE04**

### Receipt of Byproduct and Special Nuclear Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations governing the condition of licenses for production and utilization facilities to allow a reactor licensee to receive back byproduct and special nuclear material that is produced by operating the reactor after that material has been sent off-site for processing, such as compaction or incineration.

**EFFECTIVE DATE:** November 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** LeMoine J. Cunningham, telephone (301) 504–1086, or Paul H. Lohaus on (301) 504–2553. U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:**

Contents



### I. Background

On April 24, 1992 (57 FR 15034), the Commission published a proposed rule that would amend its regulations in 10 CFR 50.54, "Conditions of licenses." This addition to the regulations is needed primarily because of changing circumstances surrounding the treatment, storage, and disposal of low-level radioactive waste (LLW) generated by operating nuclear power reactors. At the time when most operating licenses were issued, the Commission expected that LLW would be promptly treated and sent off-site for disposal in a licensed LLW disposal facility. Therefore, licensees were not authorized to receive byproduct or special nuclear material except in the form of sealed sources for analysis, calibration, or other special purposes, in the form of fuel for use in the reactor, or associated with radioactive apparatus or components.

Except for LLW generated in Michigan, where generators have been denied access to LLW disposal capacity since November 10, 1990, companies providing nuclear power reactors with off-site LLW processing and volume-reduction services currently transfer treated waste directly to one of three operating commercial LLW disposal facilities. These companies providing off-site treatment and volume-reduction services may have several reasons for needing to return treated LLW to the generator, rather than shipping it to a disposal site. First, access to LLW disposal facilities may be restricted for the generator whose waste has been treated. Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), States with operating disposal facilities may deny access to generators in other States. Second, the licensee offering off-site services may not have adequate capacity for storing the waste until disposal. Finally, the legal relationships among States and regions, established under the various compacts ratified by Congress, in conjunction with the LLRWPAA, may force return of treated LLW to the generator in order to ensure that the waste is disposed of at the appropriate disposal facility. Accordingly, although a reactor licensee may send its LLW off-site to another licensee for treatment (e.g, compaction, or incineration), the licensee treating the waste will have a need to return the waste to the generator, but may not do so because the generator lacks authority to receive it.

The Commission identified two principal options for addressing this issue. The first option was to use a case-by-case licensing-action approach, either by amending each facility license, or by issuing a separate license under 10 CFR part 30. This action would require each facility licensee either to request an amendment to its operating license, authorizing the receipt of processed LLW, or to request a separate license. However, addressing the issue for each licensee individually would be inefficient, requiring both the licensee and NRC to expend significant resources.

The second option, adopted by the Commission as the final rule, amends 10 CFR 50.54, "Conditions of licenses," to allow reactor licensees to receive back LLW generated at the plant and shipped off-site for processing. This approach not only resolves the authorization issue, but also eliminates the need for significant NRC and licensee efforts to complete and approve the amendment requests to part 50 licenses, and ensures that a uniform approach is applied in all cases.

The Commission considers the final rule a minor amendment that does not represent any change in Commission regulatory policy regarding radioactive waste. On October 16, 1981, the Commission published its policy statement on LLW volume-reduction (46

FR 51100), in which it called upon all generators of radioactive waste to reduce the volume of LLW for disposal, to extend the life of disposal sites and alleviate storage concerns. The final rule will further enhance licensees' options to reduce the volume of waste, by using services performed off-site and permitting the return of the treated waste to the generator. The Commission anticipates that many reactor licensees will take steps to process or reduce the volume of generated LLW, typically by off-site compaction and incineration, before storing the waste at their facilities, on an interim basis.

However, the Commission does not look favorably on long-term on-site storage. The final rule is intended to ensure that licensees will have adequate short-term on-site storage capacity for self-generated LLW, until permanent disposal capacity is available. The commission does not believe this minor amendment represents a change in the stated Commission position that it "* * * does not look favorably on long-term on-site storage." The Commission expects licensees to ship generated wastes for disposal to the extent possible. Storage of LLW should be used only for the short-term management of LLW, when disposal is interrupted or unavailable.

The final rule applies to both power and non-power reactor licensees. The final rule does not authorize the receipt of any material recovered from the reprocessing of irradiated fuel.

In addition to publishing the proposed rule in the April 24, 1992, Federal Register NRC sent a copy of the proposed rule to all Agreement and non-Agreement State radiation control program directors, all State liaison officers, and those organizations on the low-level waste compact distribution list, on May 26, 1992. The comment period ended on July 8, 1992. Various comments were received, all of which were evaluated in developing the final rule.

**II. Response to Public Comments on the Proposed Rule**

The Commission received a total of 31 comment letters on the proposed rule. Responses were received from utilities or their counsel (19); nuclear power and nuclear material user-groups (2); State departments of health and radiation protection agencies (2); public interest groups (2); disposal facility operators and developers (2); and private citizens (4). Copies of these letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

Of the 31 letters received, 26 endorsed adoption of the proposed rule. Many of these commenters cited the benefits from off-site waste processing technology that allows operating reactor licensees to maximize current storage capacity and minimize radioactive waste volumes. They emphasized that implementation of the rule is an efficient and cost-effective solution to a practical problem, and several favorably cited the rule's timeliness and potential benefits in light of future uncertainties concerning LLW disposal capacity. One commenter, after endorsing the proposed rule, encouraged NRC to become more involved in the licensing process for new disposal sites. Both Illinois and Arkansas, the only states to provide comments concerning the proposed rule, endorsed the rule.

Approximately 20 specific questions or suggestions were received that address the proposed rule. The majority of comments received may be grouped into one of four basic categories that include:

(1) Clarification and enhancement of the proposed rule,
(2) Waste accountability at the processor licensee,
(3) Radioactive waste transportation concerns, and
(4) Worker health and safety.

Public comments and NRC responses follow:

*Comment:* Six commenters requested that the rule be clarified to authorize reactor licensees to receive back processed waste originally generated by any reactor or reactors located at the same site. Commenters pointed out that some plants do not distinguish one unit's waste from an adjacent unit's waste when shipping off-site for treatment, and that oftentimes, wastes generated at a particular site with multiple operating reactors will be commingled. They argued that the proposed rule, if strictly interpreted, would not allow a reactor licensee to receive back processed waste containing waste from another reactor located at the same site. Three commenters explicitly requested that NRC change the proposed rule to permit wastes generated at a single site to be consolidated. Two of the three, Edison Electric Institute and the law firm of Winston & Strawn, provided NRC with specific language for such clarification. Three other commenters concurred with this recommendation by citing Edison Electric Institute's submittal to NRC concerning the proposed rule.

*Response:* The Commission agrees that the rule should permit radioactive waste from multiple units of one licensee at a particular site to be received back under the license of any of the units at that site. The Commission has revised the final rule to reflect this change. The following language is added to modify § 50.54(ee)(1) of the final rule: "Each license issued under this part authorizing the possession of byproduct and special nuclear material produced in the operation of the licensed reactor includes, whether stated in the license or not, the authorization to receive back that same material, in the same or altered form or combined with byproduct of special nuclear material produced in the operation of another reactor of the same licensee located at that site * * *"

*Comment:* One commenter suggested that the proposed rule be modified to authorize the receipt back of byproduct or special nuclear material from a non-licensed entity that is authorized to possess the radioactive material, but is not "a licensee of the Commission or an Agreement State," as the proposed rule had originally stipulated. The commenter suggested that a common or contract carrier transporting source or byproduct radioactive material may not be able to return such material to the reactor licensee generating the material, although this may be necessary in several situations, such as the return of waste because of ineffectual waste packaging. Similarly, the commenter contended, a non-licensed government agency, such as the Department of Energy, may be unable to return treated waste to a reactor licensee if a strict interpretation of the proposed rule were adopted.

*Response:* The Commission agrees that the rule should permit receipt back, by a reactor licensee, of byproduct and special nuclear material produced by the reactor licensee from a non-licensed entity that is authorized to possess the material. The Commission has revised the final rule to reflect this enhancement. In § 50.54(ee)(1) of the final rule, authority has been granted to power and non-power reactor licensees to receive back byproduct and special nuclear material produced in the operation of the reactor "from a non-licensed entity authority to possess the material," as well as from Commission or Agreement State licensees.

*Comment:* One commenter suggested that NRC modify the proposed rule to authorize the transfer of byproduct or special nuclear material for volume-reduction or decontamination purposes among reactor sites with a common licensee. The commenter stated that "* * * under the Commission's restrictive interpretation of the scope of reactor operating licensees, a reactor

licensee may not receive LLW for processing that was produced in the operation of a reactor for which it also has license responsibilities."

*Response:* The Commission believes authorization permitting a reactor licensee to receive byproduct or special nuclear material, at one reactor site, that is produced at another reactor site for which it also has licensee responsibilities for the purpose of performing decontamination or volume-reduction services, is beyond the scope of this rulemaking. The Commission does not agree that the proposed rule should be modified to allow transfer of byproduct and special nuclear material among reactor sites for this purpose. As a matter of policy, the Commission opposes practices at reactor facilities that may divert the attention of licensee management from the primary task of safe operation of the power reactor. Accordingly, the Commission believes that such situations should continue to be reviewed and authorized on a case-specific basis.

*Comment:* One commenter suggested that NRC clarify that, if the proposed rule is adopted, the final rule will also authorize the transfer of decontamination equipment that is slightly contaminated with byproduct or special nuclear material among reactor sites with a common license.

*Response:* The Commission believes this suggestion is beyond the scope and intent of the rulemaking. Accordingly, the Commission does not agree that the proposed rule should address this issue. However, part 50 licenses typically contain conditions that permit transfer of decontamination equipment among reactor sites with a common license. Licenses which permit the licensee to "* * * receive, possess * * * any byproduct, source or special nuclear material * * * associated with radioactive apparatus or components," may authorize the receipt of transferred decontamination equipment.

*Comment:* Three commenters expressed concern that the rule will result in an increase in the number of miles traveled by radioactive waste on our nation's highways, and that this is not in the public interest. One commenter suggested that potential hazards are greater from the transportation of radioactive waste on the return leg from a processor to a generator, because the radioactive material within the waste has been concentrated.

*Response:* The proposed rule may result in an increase in the number of miles radioactive waste is transported. The additional dose associated with this transportation, however, represents only a small increase in doses (that are already small) from transportation activities. Further, all waste shipments must meet the applicable regulatory requirements of the U.S. Department of Transportation and the U.S. Nuclear Regulatory Commission. The regulations require the packaging to be commensurate with the potential hazard of the contents.

*Comment:* Two commenters suggest that off-site processing creates health risks to "additional attending personnel." One commenter, therefore, advocates on-site processing of waste. This commenter contends that on-site processing minimizes the number of people exposed to the hazards of radiation; additional handling, storage, and transportation will result in higher exposure to personnel and greater risks of harmful effects to the public.

*Response:* All processing, storage, and transportation of LLW must meet regulatory requirements. This minor rule change, which authorizes receipt of waste, does not change any of the requirements concerning waste processing, storage, and transportation. The collective occupational exposure (dose) would be essentially the same for the waste processing whether the processing were done on-site or off-site, assuming that the same process were used in either location. Additional handling for shipping and receiving of wastes sent off-site for processing is needed; however, this incremental dose from this activity would be a small fraction of the dose for waste processing and other shipping and receiving activities. The corresponding doses to members of the public would also represent a very small incremental increase in doses that already are very small.

*Comment:* Several comments were received about accountability of waste at the waste processor, and subsequent changes to the waste as a result of waste processing activities. Specifically, two commenters suggested that the possible intermingling of wastes at the processor facility would make difficult the task of ensuring that waste received from a particular generator is returned to that generator alone, as required by the rule. Another commenter expressed concern that accompanying waste manifests may become inaccurate as a result of changes to the waste by the processor licensee.

*Response:* An individual reactor licensee's decision to ship waste off-site for processing, with the intention of receiving back such LLW for temporary storage, will require the reactor licensee to coordinate with the waste processor, to ensure that waste shipped back to the facility fulfills the criteria of the new rule and any other applicable regulations. Processors who choose to accept reactor waste intended for return back to the reactor site licensee currently satisfy a host of substantive requirements governing transfer and recordkeeping of radioactive waste cited in 10 CFR 20.311, "Transfer for disposal and manifests," or appendix F to new §§ 20.1001 through 20.2401, "Requirements For Low-Level-Waste Transfer for Disposal at Land Disposal Facilities and Manifests." These rules require that manifests accompanying radioactive waste shipments to licensed waste processors and land disposal facilities. The manifest must indicate the identification of the waste generator, the physical description of the waste, waste volume, waste radionuclide identity and quantity, total radioactivity, and the principal chemical form of the waste. In addition to the manifesting requirements, licensed waste processors who treat or repackage waste must also fulfill waste classification, identification and labeling requirements found in 10 CFR 61.55, 61.56, and 61.57.

The final rule exclusively authorizes reactor licensees to receive back LLW sent off-site for treatment. The final rule does not allow a reactor site to accept any waste that is not originally generated at the site, and the processor must fashion its operations to comply with this condition. The individual processor licensee, when receiving waste intended for return to the reactor site, may have to perform individual "batch" processing, for the reactor licensee to accept processed waste in compliance with the rule.

*Comment:* One commenter pointed out that waste processing may result in changes to waste classification, and in fact, may concentrate radioactivity enough to approach or exceed greater-than-class-C waste concentrations. This commenter was concerned that these potential shifts in waste classification might go unreviewed. This commenter also expressed concern that waste processing operations may produce waste products containing mixed waste and may result in the release of gases or particulates into the atmosphere. Waste processing operations may increase the toxicity or concentration of the waste, this commenter argued, suggesting that this is an undesirable outcome from the perspective of the Host State responsible for ultimate disposal of the treated waste.

*Response:* If a reactor licensee intends to receive back LLW shipped off-site from its facilities and is to comply with the rule, the processor licensee will have

to segregate wastes by individual reactor licensee. Excluding this segregation operation, the rule will not affect waste processor licensee generated waste product or operations. The final rule will not result in changes to waste product currently generated by waste processors. The final rule may lead processors to treat some reactor-generated wastes in individual "batches," to allow return of the waste back to the reactor licensee, but otherwise, processor licensees will simply continue performing LLW volume-reduction activities, as they have before promulgation of the final rule. NRC and Agreement State regulations are in effect which authorize treatment and handling operations at waste processor licensee facilities and ensure that these operations are conducted safely and without adverse effects on the environment. These conditions are not affected by the final rule, and will continue in force after promulgation of the final rule.

*Comment:* One commenter expressed concern that it was unclear what authority had responsibility to oversee waste processing and enforcement at the processor. This same commenter questioned whether waste ownership or title to the waste may, in fact, become obscured as a result of waste being shipped and managed by several licensees.

*Response:* NRC will continue to license and inspect processor licensees in non-Agreement States, and the Agreement State authorities will continue to license and inspect their licensees. Tracking and manifest requirements will continue to apply to reactor-generated wastes, and title to the waste and waste ownership can be adequately communicated and documented between reactor licensees and processor licensees. Before the final rule, waste processors have received waste from reactor licensees, have processed the waste to reduce its volume, and have repackaged and shipped for disposal the final, volume-reduced waste product. The transfer of waste from generator to processor and/or broker, and from processor and/or broker to a disposal facility licensee, has not resulted in a significant number of disputes concerning transfer of title or possession of radioactive wastes, among licensees. The contractual arrangements between licensees and the laws of the various States pertaining to transfer of ownership continue to provide licensees with the means by which they can negotiate the transfer of title to the waste. The Commission does not envision any difficulties concerning radioactive waste title transfer originating from promulgation of the final rule.

*Comment:* One commenter asked whether the language in the proposed rule prohibiting receipt back of material "recovered from the reprocessing of irradiated fuel" could be applied to LLW containing fuel fines from damaged fuel rods. The commenter questioned whether NRC prohibits off-site treatment of such wastes, and whether the generator of such wastes may refuse to accept back such wastes once processed. The commenter asked whether the term "reprocessing of irradiated fuel" is "narrowly" interpreted by the NRC to refer only to the reprocessing of spent fuel rods.

*Response:* The proposed rule contains no new authorizations for, or prohibitions against, LLW processing. The term "material recovered from the reprocessing of irradiated fuel" does refer to the reprocessing of "spent fuel rods" and does not apply to LLW containing fuel fines from damaged fuel rods. NRC does not prohibit off-site treatment of LLW that may contain very small quantities of fuel fines from damaged fuel rods. The rule authorizes, but does not require, the receipt of waste. Reactor licensees are not authorized to reprocess irradiated fuel or to possess the wastes from such reprocessing. (Wastes from fuel reprocessing are, by regulatory definition, high-level wastes, not LLW.) The intent of the proposed rule is to allow reactor licensees to receive the radioactive materials that they produce and that they already are allowed to possess. The sentence in question, concerning fuel reprocessing, was added to the proposed rule to make it clear that reactor licensees are not authorized to receive materials that they are not already authorized to possess (reprocessing wastes).

*Comment:* One commenter expressed concern that by allowing all reactor licensees to receive back waste after processing, many States will simply require these licensees to store all other LLW generated within the State.

*Response:* The Commission does not believe this issue is germane to the final rule. The final rule affects license conditions allowing receipt of radioactive material, but does not alter conditions concerning storage of radioactive waste. The rule addresses the receipt back of LLW generated only at reactor sites, and shipped off-site for processing. The rule does not authorize the storage of LLW, generated throughout the State, at reactor sites.

*Comment:* One commenter inquired as to the actions to be taken if a generator refuses to accept waste back after processing.

*Response:* NRC does not consider this a likely scenario. Both the generator and the processor involved in the transfer of waste for treatment will likely have agreed, by contract, on the terms of treatment and transfer of the LLW. If the waste, on return to the generator, is not accepted by the generator, the processor licensee would have grounds to seek legal recourse to force the generator to take possession of the treated LLW. However, if a threat to the public health and safety were to present itself at any time as a result of a reactor licensee's refusal to accept waste from a processor shipped off-site for processing, NRC would use its authority to compel the appropriate party to take possession of the waste, and store it safely.

*Comment:* One commenter suggested that a loophole in the Low-Level Radioactive Waste Policy Act of 1980 allows a licensee to forward a shipment of radioactive material to another State to be stored or treated, and then avoid all responsibility for disposal of the material by declaring the material a waste. The 1980 Act places the receiving State in an untenable position by requiring it to provide disposal capacity for wastes its licensees become burdened with in this manner.

*Response:* The 1980 Act encourages States to form regional compacts to collectively provide for disposal capacity of LLW. These compacts, authorized by Congress, were allowed to exclude waste generated outside their borders, beginning January 1, 1986. This date was later extended to January 1, 1993, when Congress approved the Low-Level Radioactive Waste Policy Amendments Act of 1985. The 1985 Act further authorizes that each State shall provide disposal capacity for LLW "* * * generated within * * *" the State. Accordingly, generators who ship radioactive material out-of-state for processing, and then declare that material to be LLW, will likely be unable to shift responsibility for the disposal of their waste. Therefore, the Commission does not consider this to be a significant issue, nor one which is affected, in any way, by the final rule.

*Comment:* One commenter suggested that the rule clarify considerations for non-reactor licensees concerning receipt of waste back at their facilities after processing.

*Response:* The Commission has drafted the final rule to apply to reactor licensees, only. Reactor licensees have reported that processor licensees are

unwilling to accept reactor-generated waste without some assurance that reactor licensees will be authorized to receive back processed LLW initially generated at the reactor facility. Currently, no problems have been identified concerning parts 30, 40, and 70 licensees and the return of processed LLW to their facilities. The Commission can address this issue in the future if parts 30, 40, and 70 licensees encounter problems in this area.

*Comment:* One commenter noted that currently available on-site volume-reduction technology is more cost-effective than the "double-handling" mandated by off-site processing.

*Response:* This rule does not mandate off-site processing. The licensee is free to evaluate the cost effectiveness of a given technology or process and choose either on-site or off-site processing.

*Comment:* Two commenters suggested that the rule be decided in conjunction with the proposed rule on export and import of radioactive waste. Commenters were concerned that wastes may be imported for disposal from NRC licensees operating abroad.

*Response:* The Commission does not agree that these concerns are applicable to the final rule. The Commission does not believe the final rule will have any impact on the proposed rule on export and import of radioactive waste, nor will the proposed rule on export and import of radioactive waste impact this rulemaking.

*Comment:* Two commenters argued that the implications of the rule are uncertain in the aftermath of the Supreme Court's decision rejecting the "Take Title" provision of the LLRWPAA. One commenter asked whether States, under the proposed rule and in light of the Supreme Court's decision in *New York* v. *United States*, could refuse to allow interim on-site LLW storage.

*Response:* On June 19, 1992, the U.S. Supreme Court issued its decision on the New York challenge to the constitutionality of the LLRWPAA. Although the Supreme Court decision, in this case, is currently being evaluated for its possible general impact on the management of LLW in this country, the Supreme Court decision does not impact the final rule.

*Comment:* One commenter expressed concerns that volume reduction of a "source" containing some intrinsic value would lose its remaining value after being compacted to reduce the volume of the waste.

*Response:* The Commission does not believe this issue is pertinent to the final rule.

*Comment:* One commenter in Florida expressed concern that the proposed amendment would allow nuclear power plants, including Turkey Point in Florida, to store LLW on-site for an indefinite period. The commenter believes that South Florida's unique hydrology and geology raise serious questions about its suitability for storage of LLW. The commenter states that any decisions by NRC to allow LLW to be stored at reactor sites should be made on a site-specific basis and that an environmental impact statement (EIS) should be prepared under the National Environmental Policy Act (NEPA) for Turkey Point, because the original EIS (in 1972) did not address storage of LLW. One commenter, from Michigan, expressed concern that, given the importance of the Great Lakes, nuclear power plants in the Great Lakes area be phased out so that no further waste accumulates.

*Response:* Current reactor license conditions allow licensees to store wastes to store wastes generated in the operation of the reactor. While the rule authorizes reactor licensees to receive back waste shipped off-site for processing, the final rule makes no changes to existing requirements concerning storage of LLW, nor does it modify waste processing or transportation requirements. Site-specific concerns associated with storage of wastes authorized under terms of existing licenses should be addressed on a case-specific basis.

*Finding of No Significant Impact: Availability*

The Commission previously determined that the selected action was of the type described in the categorical exclusion of 10 CFR 51.22(c)(2). After having received several comments addressing the transport and storage of processed LLW, however, the Commission has chosen to conduct an environmental assessment pertaining to these environmental concerns and the consequences of the proposed rule.

The Commission has determined, under the National Environmental Policy Act of 1969, and the Commission regulations in subpart A of 10 CFR part 51, that this rule would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The handling and temporary storage of concentrated waste will not significantly increase risks to workers or the public. Similarly, this rule will not pose significant risks to the public or the environment resulting from additional miles traveled by radioactive wastes on our Nation's highways. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Richard H. Turtil, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–3447.

*Paperwork Reduction Act Statement*

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

*Regulatory Analysis*

The Commission has considered alternatives to, as well as the costs and benefits of, the final regulation. There is no alternative to amending the regulations that would satisfy questions concerning the legality of transfer on a generic basis. The final regulation will not impose any additional cost nor burden on a licensee or other individual. The final rule is intended to facilitate actions necessary to ensure that licensees will have adequate short-term on-site storage capacity for LLW, until permanent disposal is available. The Commission does not look favorably on long-term on-site storage. The foregoing constitutes the regulatory analysis for the final rule.

*Regulatory Flexibility Certification*

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect small entities. The final regulation is entirely permissive in nature and will predominately affect large entities, nuclear power reactor licensees, and persons who provide volume-reduction services to these licensees.

*Backfit Analysis*

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions that would impose backfits, as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, NRC is adopting the following amendment to 10 CFR part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In 50.54, paragraph (ee) is added to read as follows:

**§ 50.54 Conditions of licenses.**

* * * * *

(ee)(1) Each license issued under this part authorizing the possession of byproduct and special nuclear material produced in the operation of the licensed reactor includes, whether stated in the license or not, the authorization to receive back that same material, in the same or altered form or combined with byproduct or special nuclear material produced in the operation of another reactor of the same licensee located at that site, from a licensee of the Commission or an Agreement State, or from a non-licensed entity authorized to possess the material.

(2) The authorizations in this subsection are subject to the same limitations and requirements applicable to the original possession of the material.

(3) This paragraph does not authorize the receipt of any material recovered from the reprocessing of irradiated fuel.

Dated at Rockville, Maryland, this 14th day of October, 1992.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 92–25504 Filed 10–20–92; 8:45 am]

BILLING CODE 7590-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Part 700**

**Definitions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board requested comments on proposed changes to the risk asset regulation on April 23, 1992. The comment period was extended until June 30, 1992. The NCUA Board is adopting the amendments as proposed with two exceptions. First, the definition of a corporate credit union is changed to be consistent with the definition in NCUA's regulation governing corporate credit unions. Second, the exemption from risk assets is amended to exclude certain loans, since loans are generally carried on the books of the credit union at cost. Loans cannot be marked to market monthly or carried at the lower of cost or market according to generally accepted accounting principles. Loans can and should be carried at the lower of cost or market only when those loans are held for sale on the secondary market.

The final amendments will exempt from the definition of risk assets certain assets with maturities in excess of 3 years, where the interest rate resets or reprices at least annually, subject to certain restrictions.

**EFFECTIVE DATE:** October 21, 1992.

**ADDRESSES:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** D. Michael Riley, Director, or Kimberly A. Iverson, Corporate Program Manager, Office of Examination and Insurance at the above address, or telephone (202) 682–9640.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

Section 116(a) of the Federal Credit Union Act (12 USC 1762(a)) (Act) requires that federal credit unions set aside a certain percentage of gross income at the end of each accounting period as a Regular Reserve. Section 700.1(i) of the NCUA Rules and Regulations (12 CFR 700.1(i)) lists which assets are exempt from the reserve requirements (definition of risk assets). Section 741.9 of the NCUA Rules and Regulations states that federally insured state-chartered credit unions must comply with the statutory requirements. According to section 116 of the Act, the amount of reserve transfer is based on a two-tiered formula, according to the size or age of the credit union. This formula is based on the ratio of reserves to risk assets.

At its April 23, 1992 Board Meeting, the NCUA Board proposed that the exemptions from risk assets for federally insured credit unions be expanded (See 57 FR 18836, May 1, 1992). The NCUA Board proposed that certain variable rate assets with maturities in excess of 3 years that reprice or reset at least annually be excluded from classification as risk assets. The proposal also required that Membership Capital Share Deposits (MCSDs) be included as risk assets, regardless of their maturity.

**Comments**

Seventy-eight comment letters were received. Forty-seven comments were received from federal credit unions, eighteen from state-chartered credit unions, two from national credit union trade associations, and four from state credit union leagues. Four comments were received from state regulatory agencies and three comments were received from investment companies. Thirty-five commenters agreed with the proposed amendments as issued and

many of these commenters commended NCUA for proposing these changes. Eight commenters supported the amendments in general, but suggested one or more modifications. Six commenters objected to the proposed amendments in its entirety.

A few commenters misunderstood the proposed amendments and concluded that all variable rate loans with maturities over 3 years would be excluded as risk assets. This was not the intent. Only those loans specified in § 700.1(i)(4), (5) and (6) with maturities of 3 years or less, or with maturities of greater than 3 years, but for which the interest rate resets or reprices at least annually, are exempt from classification as a risk asset. These loans are primarily loans to other credit unions and loans that are fully insured or guaranteed by the Federal or a state government agency or any agency of either.

*Membership Capital Share Deposits*

The NCUA Board approved major revisions to the corporate regulation at the May 7, 1992 meeting (See 57 FR 22626, May 28, 1992). As part of this revision, MCSD accounts were authorized. Generally, MCSD accounts are deposits made by member credit unions in the corporate credit union in order to build capital for the corporate credit union. Since the rule defines MCSD accounts as secondary capital for the corporate credit union, they are at risk for the depositing credit union. The corporate rule further defines MCSD accounts as accounts offered by corporate credit union which are established, at a minimum, as 12-month notice accounts which are not subject to share insurance coverage by the National Credit Union Share Insurance Fund or other deposit insurers and, in the event of liquidation of the corporate credit union, are payable only after satisfaction of all other claims against the liquidation estate.

Eight commenters specifically approved the proposal to include MCSDs as a risk asset, regardless of their maturity. As the basis for their approval, some commenters cited the fact that MCSD accounts are not insured in the event of liquidation. Ten commenters specifically opposed this amendment believing that categorizing MCSD accounts as risk assets may have a detrimental affect on corporate credit unions. Specifically, they believe that by classifying MCSD accounts as risk assets, a number of credit unions may choose to remove funds on deposit at their corporate credit union and deposit them elsewhere. The NCUA Board firmly believes that MCSD accounts should be considered a risk asset due to being classified as secondary capital and, as such, at risk.

One commenter argued that MCSD accounts be exempt from the definition of risk assets because of typical MCSD features of a resetting interest rate and redemption rights over 3 to 5 years which are sufficient reasons to exempt MCSD accounts from the definition of risk assets. Again, the NCUA Board believes that because of the overriding factor that MCSD accounts are considered capital of the corporate credit union and, therefore, at risk, these deposits should be considered risk assets.

*Student Loans*

Several commenters recommended exempting guaranteed student loans (GSLs) from the definition of risk assets because they pose almost no risk to credit unions. One commenter states that GSLs are insured by a legitimate insuring agency, and on which a commitment to purchase has been received from a bona fide secondary market, should not be considered risk assets. Another believes guaranteed student loans pose little or no risk since they reprice quarterly and are either fully insured or fully guaranteed.

The NCUA Board agree with the commenters and will continue to exclude student loans with remaining maturities of 3 years or less from classification as a risk asset. Additionally, student loans with maturities greater than 3 years, but for which the interest rate reprices or resets at least annually, will also be excluded from risk assets. The NCUA Board will revisit this issue, along with reviewing all government guaranteed loans as exclusion from risk assets, at some time in the future.

*Exemptions*

Six commenters requested that loans or assets of any maturity which are fully insured or guaranteed by the U.S. Government not be classified as risk assets. These commenters believe that these types of loans or assets only contain interest rate risk. Since the principal is not at risk, they believe these loans or assets should not be included in the risk asset calculation used to determine reserves.

The current regulation exempts certain loans and assets with remaining maturities of 3 years or less from classification as risk assets. The proposed regulation expands that exemption to include certain loans and assets with maturities in excess of 3 years where the interest rate resets or reprices at least annually. It was argued that the interest rate risk associated with assets of this type was minimal and as such, these instruments should be excluded from risk assets. The NCUA Board is not willing to expand this definition further. The NCUA Board believes that the interest rate risk exposure on fixed rate, longer term assets is sufficient to justify their inclusion as risk assets.

Four commenters requested that all collateralized mortgage obligations (CMOs) be exempt from the definition of risk assets. Another commenter stated that U.S. Government agency CMOs and REMICs carry the triple protection of a U.S. Government guarantee, the physical underlying guarantee and collateralization, while having an average life under 3 years, and thus should not be classified as a risk asset. Another commenter suggested that the term "remaining maturity" in § 700.1(h) should be defined as the time period from the date of the required reserve transfer to the stated date of the maturity of the investment, *unless* the asset contains provisions for scheduled repayments in which case the weighted average of the maturity of the investment is used to determine whether the asset is a risk asset. The effect of this redefinition would be to exclude several types of investments, including some fixed rate mortgage-backed securities, from the definition of risk assets. This commenter believes the weighted average maturity more accurately measures the risk of these particular types of investments.

The NCUA Board believes that using the weighted average life of these securities does not remove the risk factors inherent in these types of investments. In varying interest rate markets, the average life of these instruments can extend or contract greatly, significantly affecting the anticipated or expected yield. Additionally, the average life is just that; an equal amount of principal matures both before and after the stated average life date. For these reasons, the NCUA Board does not believe that mortgage-backed securities with fixed rates of return and maturities in excess of 3 years should be exempt from inclusion as a risk asset.

Two commenters encouraged NCUA to expand the exemption of risk assets with respect to investments from the current 3-year maturity to a 5-year maturity. This issue was raised when this regulation was reviewed and revised in late 1989 (See 54 FR 48231, November 22, 1989). At that time, the NCUA Board decided to include as risk assets, investments with remaining

maturities greater than 3 years that are not carried at the lower of cost or market, or are not marked to market value monthly. The risks involved in investments with maturities greater than 3 years are recognized as twofold. First, interest rate risk can cause loss of income to a credit union when the instrument cannot be repriced. Second, market risk can cause the loss of principal value due to market fluctuations or by the sale of the instrument. The maturity length at which an investment becomes most vulnerable is dependent upon the market and the credit union's asset structure at any given point in time. Selection of the 3-year cut off in the definition of a long-term investment provides for conservative reserving requirements.

*Definition of Corporate Credit Unions*

One commenter recommended that the final regulation delete the reference to "central credit union" and define "corporate credit union" identically to the definition adopted in part 704 of the NCUA Rules and Regulations. The NCUA Board agrees with this recommendation and has made the appropriate change to § 700.1(i)(7).

**Effective Date**

This rule change is made effective upon publication in the **Federal Register** since it relieves restrictions upon federally insured credit unions. A delayed effective date is not required if a restriction is relieved.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The change will eliminate including certain assets as risk assets for purposes of the reserve transfer. It is our belief that most small credit unions (under $1 million in assets) do not carry the assets affected. In addition, there is no economic burden imposed by the change. Hence, the NCUA Board has determined and certified that the final amendment does not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

This final rule imposes no additional collection requirements; therefore, it need not be sent to the Office of Management and Budget for approval.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope."

The NCUA Board has considered the fact that this rule will affect federally insured state-chartered credit unions (FISCUs) in the determination of reserve transfers. It does not impose any additional cost or burden on the states, nor does it affect the states' ability to discharge traditional state government functions. The benefits provided and protection afforded by the NCUSIF is the same for FISCUs as it is for federal credit unions. It is protection afforded through a Federal system and the responsibility for administering that system lies with the NCUA Board. All federally insured credit unions, whether federal or state-chartered, will be subject to the same requirements. The requirement for all federally insured credit unions is the same, i.e., reserve transfers in accordance with section 116 of the Federal Credit Union Act. The acts and requirements subject to this proposed rule have implications for the entire federally insured credit union system and its insurer, and are not unique to only type of charter.

**List of Subjects in 12 CFR Part 700**

Credit unions, Reserve requirements, Risk assets.

By the National Credit Union Administration Board on October 13, 1992.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA amends its regulation as follows:

## PART 700—[AMENDED]

1. The authority citation for part 700 continues to read as follows:

**Authority:** 12 USC 1752(5), 1757(6), and 1766.

2. a. Section 700.1(i)(7) is revised to read as follows:

**§ 700.1 Definitions.**

* * * * *

(i) * * *

(7) Shares or deposits in a corporate credit union that have a remaining maturity of 3 years or less, other than Membership Capital Share Deposit accounts as defined in part 704. A corporate credit union is defined as a credit union that:

(i) Is operated primarily for the purpose of serving other credit unions;

(ii) Is designated by the National Credit Union Administration as a corporate credit union; and

(iii) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

* * * * *

b. Current § 700.1(i)(16) is redesignated as § 700.1(i)(17) and current § 700.1(i)(17) is redesignated as § 700.1(i)(18).

c. Section 700.1(i) introductory text is republished and paragraph (i)(15) is revised to read as follows:

* * * * *

(i) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets:

* * * * *

(15) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with maturities greater than 3 years are exempt from risk assets if the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly.

* * * * *

d. Section 700.1(i)(16) is added to read as follows:

* * * * *

(16) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with remaining maturities greater than 3 years are exempt from risk assets provided they meet the following criteria, irrespective of whether or not the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly:

(i) The interest rate is reset at least annually.

(ii) The interest rate of the instrument is less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer.

(iii) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

* * * * *

[FR Doc. 92-25394 Filed 10-20-92; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 92-ASW-3; Special Condition 29-ASW-7]

## Special Condition; Eurocopter Deutschland Model BK-117 C-1 Helicopter, Power Turbine Electronic Overspeed Protection System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Eurocopter Deutschland Model BK-117 C-1 helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca Arriel 1E engines, which will have a power turbine electronic overspeed protection system. This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: October 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Federal Aviation Administration (FAA), Rotorcraft Standards Staff, Regulations Group, Forth Worth, Texas 76193-0111; telephone (817) 624-5120.

SUPPLEMENTARY INFORMATION:

### Background

Eurocopter Deutschland, Munich, Germany, submitted an application on March 8, 1991 , for an Amended Type Certificate for the Model BK-117 C-1 helicopter to the FAA Brussels Aircraft Certification Office. The application was submitted through the Germany Luftfahrt Bundesamt (LBA) authorities. The two Lycoming LTS 101-750B-1 engines that were installed in the BK-117 B-1 helicopter will be replaced by two Turbomeca "Arriel 1E" engines for the BK-117 C-1 model helicopter. The Turbomeca "Arriel 1E" engines will have a power turbine electronic overspeed protection system.

### Type Certificate Basis

The certification basis established for the Model BK-117 C-1 helicopter consists of FAR 21.29 and FAR 29 (effective February 1, 1965), Amendments 29-1 through 29-16, plus the following propulsion system regulations in effect on March 8, 1991, the date of Eurocopter Deutschland's application to the LBA:

FAR 29.901—Powerplant Installation, Amendment 29-26.
FAR 29.903—Engines, Amendment 29-26.
FAR 29.908—Cooling Fans, Amendment 29-26.
FAR 29.955—Fuel Flow, Amendment 29-26.
FAR 29.961—Fuel System Hot Weather Operation, Amendment 29-26.
FAR 29.1041-1047—Cooling, Amendment 29-26.
FAR 29.1091—Air Induction, Amendment 29-17.
FAR 29.1093—Air Induction System Icing Protection, Amendment 29-26.
FAR 29.1103—Induction Systems Ducts and Air Duct System, Amendment 29-17.

Additionally, FAR part 36, Noise Standards, amended by Amendments 36-1 through the latest amendment adopted and in effect when noise tests or analysis are completed, is a basis for certification.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the helicopter or the engine installation.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

### Discussion

Notice of Proposed Special Condition No. SC-92-3SW was published in the Federal Register on July 20, 1992, (57 FR 31986). No comments were received. Therefore, the special condition is adopted as proposed.

The Eurocopter Deutschland Model BK-117 C-1 helicopter, at the time of the application for an amended type certificate, was identified as incorporating one and possibly more electrical/electronic systems that will perform functions critical to the continued safe flight and landing of the helicopter. A power turbine electronic overspeed control. The control of engine overspeed is critical to the continued safe flight and landing of the helicopter during all operating flight regimes, both visual flight rules (VFR) and instrument flight rules (IFR).

If it is determined that this helicopter will incorporate other electrical/electronic systems performing critical functions, those systems also will be required to comply with the requirements of this special condition.

### Conclusion

This action will affect only one unusual or novel design feature on one series of helicopters. It is not a rule of general applicability and will affect only the manufacturer who applied to the FAA for approval of these features on the affected helicopters.

The FAA has determined that good cause exists for making this rule effective in less than 30 days after publication. This special condition affects only a single type design. No comments were received in response to the Notice. Further, the applicant would experience an undue economic penalty due to an accelerated contractual commitment if the effectivity of this rule of special effect is delayed. Therefore, this special condition is made effective immediately upon issuance.

### List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

### The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Eurocopter Deutschland Model BK-117 C-1 helicopter:

### Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on October 6, 1992.

**James D. Erickson,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 92-25554 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-12-AD; Amendment 39-8327; AD 92-16-17]

## Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and Model 767 series airplanes, that currently requires modification of the Model 747 off-wing escape slide compartment door opening thrusters and the Model 767 off-wing escape slide compartment door opening/snubbing actuator, by replacing certain O-rings. This amendment requires inspection of the door opening thrusters and door opening/snubbing actuators for proper oil quantity, and modification of the off-wing compartment latching assemblies. This amendment is prompted by reports of the off-wing escape slide system failing to deploy when commanded. The actions specified by this AD are intended to prevent failure of the escape slide to deploy, which could delay and possibly jeopardize the successful emergency evacuation of an airplane.

**DATES:** Effective November 25, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from OEA, Inc., P.O. Box 10486, Denver, Colorado 80210; or Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jayson Claar, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2784; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-18-04, amendment 39-5992 (53 FR 29652, August 8, 1988), which is applicable to Model 747 and 767 series airplanes, was published in the Federal Register on March 4, 1992 (57 FR 7681). The action proposed to require repetitive inspections of the door opening thrusters and door opening/snubbing actuators for proper oil quantity, and modification of the off-wing escape slide compartment door latching mechanism.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter suggests that the proposed AD action be deferred until a permanent design change has been developed. The commenter states that a one-time modification requirement would be less burdensome to affected operators than the proposed modification and repetitive inspections. The FAA acknowledges that a permanent design modification that will prevent the leakage problem would be the most desirable solution to positively address the identified unsafe condition. Both Boeing and OEA are currently working to develop such a design change (an oil-less actuator), and have advised the FAA that their estimated completion date is mid-1993. However, even if development were completed by that time, it would take approximately three additional years (that is, to mid-1996) to replace all of the actuators currently in service. In light of the service history of the subject actuators and the unsafe condition presented, the FAA considers that any such delay is unacceptable and that the requirements of this AD will provide an acceptable level of safety. The FAA may consider additional rulemaking, however, once a permanent modification is developed, approved, and available.

Several commenters request that the compliance time for the initial inspection and modification be extended from the proposed 12 months to at least 18 months so as to coincide with a regularly scheduled "C" check. ("C" checks are conducted by most operators at 10- to 18-month intervals.) Adoption of the proposed 12-month compliance time would require affected operators to schedule special downtime for the affected airplanes, which would result in considerable additional expense. Additionally, some commenters are concerned that the proposed compliance time will not be sufficient for the turnaround time necessary for modification of parts; these commenters indicate that, because the modification procedure is quite complex, most operators will send the actuators back to the manufacturer for overhaul, and this procedure will require at least a six-week lead time. The FAA concurs that the compliance time can be extended as requested. In developing an appropriate compliance time, the FAA intended for it to fall during a time of regularly scheduled maintenance, when special equipment and trained personnel would be available. The FAA has determined that extending the compliance time to 18 months will not adversely affect safety. The final rule has been revised accordingly.

Several commenters request that the proposed repetitive inspections of modified door opening/snubbing actuators be deleted from the rule. (The repetitive inspections involve reweighing the actuators to determine the amount of oil remaining.) These commenters point out that the referenced OEA service bulletin states that actuators modified in accordance with that service bulletin are exempt from further inspection. Additionally, since there may be other factors besides the O-ring problem that cause oil leakage, the commenters suggest that the FAA should mandate a design solution rather than have operators institute a program to reweigh the actuators every 20 months. These commenters do not see what is to be gained by requiring repetitive inspections. The FAA does not concur with the suggestion to delete the repetitive inspection requirement. The commenters are correct in that neither Boeing nor OEA have been able to identify the specific reason for the oil leakage from the actuators. Without knowing the reason why the actuators leak, it cannot be determined how long an actuator may remain in service before it has leaked 10% to 15% of its oil capacity. Such a loss of 10% to 15% of the oil capacity will result in the actuator not functioning. The FAA acknowledges that both actuators would have to fail before the system would not operate correctly; however, there already have been five occurrences in which both actuators have leaked and the door did not open correctly. The FAA considers that it is also likely there may be many leaking actuators that have not been detected because the second actuator functions properly and the actuators are refurbished without any investigation. It is for these reasons that the FAA has determined that the repetitive inspections are warranted.

Three commenters request that the proposed repetitive inspection interval of 20 months be extended to at least 30 months so as to coincide with regularly scheduled "2C" checks. These commenters state that the 20-month

interval does not coincide with any particular scheduled maintenance period and would, therefore, necessitate special scheduling of time for the inspections to be performed. Additionally, one commenter is concerned that a potential parts availability problem could occur unless the repetitive inspection intervals are extended. The FAA does not concur with the requests to extend the repetitive inspection interval. The 20-month interval was selected so that it would coincide with the period in which most affected operators conduct a "C" check at a main base, where special equipment and trained personnel are available. Until the reasons for the oil leakage are determined and understood, the FAA considers that reinspection of the actuators at the proposed interval is reasonable and warranted in addressing the identified unsafe condition. Further, OEA, the manufacturer of the actuators, has not advised the FAA of any parts availability problem that may exist with regard to this AD; therefore, an extension of the interval for this reason is not justified.

Several commenters request that actuator units that have been overhauled by OEA be exempted from the proposed requirements of the rule. The commenters consider that such units should not require inspection since the applicable OEA service bulletin states that such overhauled units need not be inspected. The FAA does not concur with the commenters' request. The procedures that are used by OEA to overhaul the units are the same as those used by individual operators; therefore, there is no difference between overhauled units. Because there is no difference, each unit has the same potential for leakage problems and none can be exempted from the inspection requirements of this AD action. Further, regardless of what the OEA service bulletin states as to the need for inspection of overhauled units, the FAA has determined, and service history has demonstrated, that overhauled units are still subject to leakage problems. Many times, AD's may specify inspection requirements beyond those included in a referenced service document; where there are differences between the AD and the service document, the AD prevails.

One commenter requests that the proposed requirements relative to Model 767 series airplanes be revised to include reference to Boeing Alert Service Bulletin 767–25A0173 for procedures for removal of the actuator from the airplane and for inspection. The proposal only references OEA Service Bulletin 3092100–25–002, which contains procedures for overhauling the off-wing door actuator. The FAA acknowledges that the Boeing alert service bulletin identified by the commenter does contain procedures for removing actuators from the airplane; however, these same instructions are also included as a regular part of the applicable maintenance manual that each airplane owner maintains. Further, the Boeing alert service bulletin directs the reader to the OEA service bulletin for specific inspection procedures. For these reasons, the FAA considers that revising the rule to add a reference to the Boeing alert service bulletin is not necessary.

One commenter requests that the proposal be revised to require that only the oldest 50% of the in-service actuators be inspected and modified. The commenter states that a large proportion of the actuators/thrusters in service will have been changed prior to the effective date of the proposed AD, since these units have a "life limit" of 5 years for the Model 767 and 10 years for the Model 747 (that is, they are changed regularly at those intervals). If all actuators are required to be inspected and modified at the same time, there may be a potential spares availability problem. The FAA does not concur with the commenter's request. The manufacturer of the units has not given the FAA any indication that parts availability will be a problem. Further, units that are overhauled at the 5- or 10-year period will have been overhauled using the same procedures as required by this AD action and, therefore, are still likely to experience the leakage problem. Because of this, the FAA has determined that all actuators must be subject to the inspections.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 400 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 125 Model 747 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $510 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model 747 series airplanes is estimated to be $146,250, or $1,170 per airplane.

There are approximately 400 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 200 Model 767 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,380 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model 767 series airplanes is estimated to be $408,000, or $2,040 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators airplanes is estimated to be $554,250. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–5992 (53 FR 29652, August 8, 1988), and by adding a new airworthiness directive (AD), amendment 39–8327, to read as follows:

**92–16–17. Boeing:** Amendment 39–8327. Docket 92–NM–12–AD. Supersedes AD 88–18–04, Amendment 39–5992.

*Applicability:* Model 747 series airplanes equipped with two-piece off-wing escape ramp and slides; and Model 767 series airplanes equipped with off-wing escape slides; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the escape slide to deploy, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane, accomplish the following:

(a) For Model 747 series airplanes equipped with two-piece off-wing escape slide, accomplish the requirements specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) Within 18 months after the effective date of this AD, perform an inspection of the escape system door opening/snubbing actuators in accordance with OEA Service Bulletin 2174200–25–013, dated July 29, 1991. Repeat this inspection thereafter at intervals not to exceed 20 months.

(2) Within 18 months after the effective date of this AD, inspect and modify the escape slide compartment door latching mechanism in accordance with Boeing Service Bulletin 747–25–2951, dated August 15, 1991.

(b) For Model 767 series airplanes equipped with off-wing escape slides, accomplish the requirements specified in paragraphs (b)(1) and (b)(2) of this AD:

(1) Within 18 months after the effective date of this AD, inspect the off-wing escape slide door opening/snubbing actuators in accordance with OEA Service Bulletin 3092100–25–002, dated July 26, 1991. Repeat this inspection thereafter at intervals not to exceed 20 months.

(2) Within 18 months after the effective date of this AD, inspect and modify the escape slide compartment door latching mechanism in accordance with Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and modifications shall be done in accordance with OEA Service Bulletin 2174200–25–013, dated July 29, 1991; OEA Service Bulletin 3092100–25–002, dated July 26, 1991; Boeing Service Bulletin 747–25–2951, dated August 15, 1991; and Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from OEA, Inc., P.O. Box 10488, Denver, Colorado 80210; or Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 25, 1992.

Issued in Renton, Washington, on July 15, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–25453 Filed 10–20–92; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–92–AD; Amendment 39–8402; AD 92–23–02]**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires replacing certain emergency evacuation slides/rafts with modified slides/rafts. This amendment is prompted by the results of two evacuation demonstrations that revealed buckling of the evacuation slides/rafts and poor visibility of the slides for passengers evacuating during night lighting conditions. These conditions, if not corrected, could delay or impede the evacuation of passengers during an emergency.

**DATES:** Effective November 25, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 25, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Layton Walker, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5339; fax (310) 988–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on July 10, 1992 (57 FR 30697). [A correction to the proposal was published in the **Federal Register** on August 13, 1992 (57 FR 36439).] That action proposed to require replacing certain emergency evacuation slides/rafts with modified slides/rafts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Two commenters request that, for Model MD–11 series airplanes with interior passenger seating configurations not exceeding 306, the compliance time for replacing existing evacuation slides/rafts be extended from the proposed 12 months to 18 months. Both commenters express concern about the logistics of transporting the slides/rafts between Air Cruisers, the manufacturer of the evacuation slides/rafts, and the operators. One commenter notes that this would be especially problematic for overseas operators due to potential customs and freight forwarding delays. This commenter states further that the individual operators must fully cooperate to assure the timely return of loaner systems. The FAA does not concur that the compliance time should be extended. The FAA has determined

that the operators having affected airplanes with the aforementioned passenger configurations are three U.S. operators. These operators would not be subject to any customs-related delays. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In light of that data, the FAA has determined that the proposed 12-month compliance time represents the maximum interval of time allowable wherein the modifications can reasonably be accomplished and an acceptable level of safety can be maintained.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 57 Model MD–11 airplanes of the affected design in the worldwide fleet. The FAA estimates that 20 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 28 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $28,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $590,800, or $29,540 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92–23–02. McDonnell Douglas:** Amendment 39–8402. Docket 92–NM–92–AD.

*Applicability:* Model MD–11 series airplanes; operating in an all-passenger configuration, or in any combination of passenger and main deck cargo configurations; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note:** Model MD–11 series airplanes that are operated as freighters may continue to use the unmodified slides at door number 1. However, should any of these airplanes be converted to an all-passenger configuration, or any combination of passenger and main deck cargo configurations, the requirements of this AD must be accomplished.

To prevent buckling of the evacuation slides/rafts and poor visibility during night lighting conditions, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) For Model MD–11 series airplanes with interior passenger seating configurations not exceeding 306, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165: Within 12 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts, part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(b) For Model MD–11 series airplanes with interior passenger seating configurations from 307 to 381, inclusive, and the number of passenger seats in the zone between doors 3 and 4 not exceeding 165: Within 6 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts, part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(c) For Model MD–11 series airplanes with interior passenger seating configurations not exceeding 381, and more than 165 passenger seats in the zone between doors 3 and 4 Within 3 months after the effective date of this AD, replace existing evacuation slides/rafts with modified slides/rafts, part numbers 60289–115 or –117; 60290–115; 60291–115; and 60291–116; in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25–87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement shall be done in accordance with McDonnell Douglas Service Bulletin 25–87, dated January 23, 1992; and McDonnell Douglas Service Bulletin 25–116, Revision 1, dated May 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 25, 1992.

Issued in Renton, Washington, on October 13, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–25452 Filed 10–20–92; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 92-NM-182-AD; Amendment 39-8403; AD 92-23-03]**

## Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 series airplanes. This action requires repetitive visual inspections to verify the installation of shear pins, shear pin retainers, and shear pin retainer attaching parts in the aft end of the center pylon thrust link, and repair, if necessary. This amendment is prompted by a report of an incident in which both of the shear pins that attach the aft end of the center engine pylon thrust link were missing. The actions specified in this AD are intended to prevent structural damage to the engine mount structure, which could lead to loss of airplane components.

**DATES:** Effective on November 5, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 5, 1992.

Comments for inclusion in the Rules Docket must be received on or before December 21, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-182-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Maurice Cook, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5226; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** One operator of a Model MD-11 series airplane reported an incident in which both of the shear pins that attach the aft end of the center engine (No. 2) pylon thrust link were missing. Further investigation by the operator revealed that the left side shear pin, with the retainer still attached, was lying on top of the engine. The right side shear pin and retainer were not found. The operator also reported damage to the forward right side hinge on the thrust reverser cowl as a result of the load redistribution to the hinges with the pins gone.

The incident is still under investigation; the cause has not been determined. However, the operator has stated that no maintenance had been performed in the area of concern since delivery of the airplane. This indicates that the problem may have originated during production or during operation and, thus, could have fleet-wide ramifications.

If the shear pins/retainers are missing, the engine thrust loads will be improperly distributed to the airplane structure. This condition, if not corrected, could result in structural damage to the engine mount structure, which could lead to loss of airplane components.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992, that describes procedures to perform initial and repetitive visual inspections to verify the installation of the shear pins, shear pin retainers, and retainer attaching parts at the aft end of the center (No. 2) pylon thrust link. This service bulletin also describes procedures to verify the tightness of the nuts on the shear pin retainer attaching parts; once accomplished, this procedure eliminates the need for the repetitive inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD-11 series airplanes of the same type design, this AD is being issued to prevent structural damage to the engine mount structure, which could lead to loss of airplane components. This AD requires repetitive visual inspections to verify the installation of the shear pins, shear pin retainers, and shear pin retainer attaching parts at the aft end of the center engine (No. 2) pylon thrust link. (The attaching parts located at the forward end of this pylon thrust link are of a configuration that is significantly different from those at the aft end. For this reason, the forward end attaching parts are not included in this AD action.) The inspections are required to be accomplished in accordance with the service bulletin described previously.

The FAA has determined that a repetitive inspection interval of 60 days is warranted, based on the fact that the exact cause of the loose/missing items has not been determined, and little evidence exists that would provide an opportunity for analysis to justify an interval in terms of flight hours or landings.

If a discrepancy is found as a result of any inspection conducted in accordance with the AD, this AD requires that it be repaired in accordance with a method approved by the FAA. Additionally, operators are required to submit a report to the FAA of any discrepancy found during an inspection.

This AD also provides for an optional terminating action, which, if accomplished, terminates the requirement for repetitive inspections.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-182-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**92-23-03. McDonnell Douglas:** Amendment 39-8403. Docket 92-NM-182-AD.

*Applicability:* Model MD-11 series airplanes; as listed in McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent structural damage to the engine mount structure, which could lead to loss of airplane components, accomplish the following:

(a) Within 15 days after the effective date of this AD, unless accomplished within the previous 30 days, perform a visual inspection of the thrust link of the center engine forward mount to verify installation of shear pins, shear pin retainers, and shear pin retainer attaching parts, in accordance with McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992.

(1) If shear pins, shear pin retainers, and shear pin retainer attaching parts are installed, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days.

(2) If any shear pin, shear pin retainer, or shear pin retainer attaching part is missing, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(b) Verification for tightness of the nuts of the four shear pin retainer attaching bolts in accordance with McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992, constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(c) Within 15 days after finding any discrepancy as a result of any inspections required by paragraph (a) or (a)(1) of this AD, submit a report of the discrepancy to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; fax (310) 988-5210. The report must include a description of the discrepancy, the airplane serial number, and the number of flight hours and landings on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and verification for tightness (of the nuts of the four shear pin retainer attaching bolts) shall be done in accordance with McDonnell Douglas Alert Service Bulletin A54-31, dated September 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 5, 1992.

Issued in Renton, Washington, on October 14, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92-25489 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 92-AGL-7]**

## Transition Area Establishment; Cottage Grove, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes a transition area near Cottage Grove, WI, to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Blackhawk Field Airport, Cottage Grove, WI. The intended effect of this action is to ensure segregation of the aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**EFFECTIVE DATE:** 0901 UTC, December 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (312) 694-7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Wednesday, July 8, 1992, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Cottage Grove, WI, (57 FR 30178).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in this notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area near Cottage Grove, WI, to accommodate a new VOR-A SIAP to Blackhawk Field Airport, Cottage Grove, WI.

The development of a new SIAP requires that the FAA establish the designated airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Transition areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

*Section 71.181 Designation*

* * * * *

AGL WI TA Cottage Grove, WI [New]
Cottage Grove, Blackhawk Field Airport, WI
(lat. 43°06'15" N, long. 89°11'05" W)

That airspace extending upward from 700 feet above the surface within a 6.2 nautical mile radius of Blackhawk Field Airport; excluding that airspace within the Madison, WI, ARSA and Transition Area.

* * * * *

Issued in Des Plaines, Illinois, on August 27, 1992.

**Chester W. Anderson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 92-25556 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 93

**[Docket No. 25758; Amdt. No. 93-65]**

**RIN 2120-AD93**

## High Density Traffic Airports; Slot Allocation and Transfer Methods; Correction

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** On August 12, 1992, the Federal Aviation Administration (FAA) issued a final rule amending the Federal Aviation Regulations governing the allocation and transfer of air carrier and commuter slots (57 FR 37308; August 18, 1992). This action corrects an error governing the eligibility of carriers to participate in slot lotteries.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 12, 1992, the Federal Aviation Administration (FAA) issued a final rule amending the Federal Aviation Regulations governing the allocation and transfer of air carrier and commuter slots (57 FR 37308; August 18, 1992). As amended, § 93.225(e) reads, in pertinent part, "Any U.S. carrier that is not operating scheduled service at the airport and has not failed to operate slots obtained in previous lotteries * * * shall be included in the lottery * * *." The FAA did not propose and at no time intended to disqualify from participating in a lottery any carrier that had ever failed to operate slots obtained in any lottery. The agency's proposal and intent was to disqualify a carrier only if it had failed to operate slots it had obtained in the immediately prior lottery.

This action corrects the error by amending the phrase "slots obtained in previous lotteries" to read, "slots obtained in the previous lottery."

**Correction of Publication**

Accordingly, the publication on August 18, 1992, of the final regulation, which was the subject of FR Doc. 92-19585, is corrected as follows:

**§ 93.225 [Corrected]**

In the third column on page 37314 (57 FR 37314), in the eighth line under § 93.225, paragraph (e), the words "previous lotteries" are removed and the words "the previous lottery" are inserted in their place.

Issued in Washington, DC on October 16, 1992.

**Donald P. Byrne,**

*Assistant Chief Counsel, Regulations Division.*

[FR Doc. 92-25555 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8429]

RIN 1545-AO49

### General Rule for Taxable Year of Inclusion-Election To Include Crop Insurance Proceeds in Gross Income in the Taxable Year Following the Taxable Year of Destruction or Damage; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to Treasury Decision 8429, which was published in the Federal Register Wednesday, August 26, 1992 (57 FR 38594), relating to the applicability of section 451(d) of the Internal Revenue Code (regarding the taxable year of inclusion for crop insurance proceeds) to certain federal payments made to farmers.

**FOR FURTHER INFORMATION CONTACT:** Douglas Fahey, (202) 622-4950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of this correction implement the intent with which section 451(d) was initially enacted by treating qualifying disaster relief payments from the Federal Government as crop insurance proceeds for purposes of section 451(d).

#### Need for Correction

As published, T.D. 8429 contains an error which may prove to be misleading and is in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulation (T.D. 8429), which was the subject of FR Doc. 92-20088, is corrected as follows:

1. On page 38594, column 1, in the preamble under the heading "**FOR FURTHER INFORMATION CONTACT:**", line 1, the language "Douglas Fahey, 202-535-5983 (not a toll-" is corrected to read "Douglas Fahey, 202-622-4950 (not a toll ".

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 92-25428 Filed 10-20-92; 8:45 am]

BILLING CODE 4830-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 180 and 186

[PP 9F3755 and FAP 9H5583/R1168; FRL-4168-5]

RIN 2070 AB-78

### 3,7-Dichloro-8-Quinoline Carboxylic Acid

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes tolerances for the residues of the herbicide 3,7-dichloro-8-quinoline carboxylic acid in or on the raw agricultural commodities (RACs) rice grain at 5.0 parts per million (ppm); rice straw at 12 ppm; milk at 0.05 ppm; eggs at 0.05 ppm; fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; poultry fat and meat at 0.05 ppm; and poultry byproducts at 0.1 ppm; and a feed additive regulation is also established for the same chemical on rice bran at 15.0 ppm. These rules were requested by BASF Corp. and establish the maximum permissible level for residues of the herbicide in or on these RACs and animal commodity.

**EFFECTIVE DATE:** Effective on October 21, 1992.

**ADDRESSES:** Written objections, identified by the document control number [PP 9F3755 and FAP 9H5583/R1168], may be submitted to the: Hearing Clerk (A-110), Rm. M3708, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6800.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice in the Federal Register of June 29, 1989 (54 FR 27423) that the BASF Corp., Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposed amending 40 CFR part 180 by establishing tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the residues of the herbicide 3,7 dichloro-8-quinoline carboxylic acid in or on rice at 5.0 ppm; rice straw at 12.0 ppm; milk at 0.05 ppm; fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; fat and meat of poultry at 0.05 ppm; meat byproduct of poultry at 0.1 ppm; and eggs at 0.05 ppm; and proposed amending 40 CFR part 186 under section 409 of the FFDCA (21 U.S.C. 348) by establishing a food additive regulation to permit the residues of 3,7 dichloro-8-quinoline carboxylic acid in or on rice bran at 15.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petitions and other relevant material have been evaluated. The 3,7 dichloro-8-quinoline carboxylic acid data listed below were considered in support of these tolerances.

1. Several acute toxicology studies place technical-grade quinclorac in Toxicity Category III for acute oral, acute dermal, acute inhalation toxicity, and for eye irritation. Technical 3,7 dichloro-8-quinoline carboxylic acid is in category IV for primary dermal irritation and is a skin sensitizer.

2. A 1-year feeding study in dogs fed 0, 34, 142, and 513 (males) and 0, 35, 140, and 469 (females) milligrams/kilogram/day (mg/kg/day) with the no-observed-effect level (NOEL) of 140 mg/kg/day based on reduced body weight gains, adverse effect on food efficiency, hematological and clinical chemistry values, increased liver and kidney weights, and microscopic findings in liver and kidneys at 513 mg/kg/day (males) and 469 mg/kg/day (females), the highest dosages tested (HDT).

3. A chronic feeding/carcinogenicity study in rats fed dosages of 1, 56, 186, 385, and 487 mg/kg/day (males) and 0, 60, 235, 478, and 757 mg/kg/day (females) with a NOEL of 478 mg/kg/day (females) and 385 mg/kg/day (males) based on slight decreases in weight for females at 757 mg/kg/day (HDT) and an eqivocal (uncertain) increase in acinar cell hyperplasia of the pancreas in males at 487 mg/kg/day (HDT). There were no carcinogenic effects noted for female rats under the conditions of the study up to 757 mg/kg/day (HDT).

4. A carcinogenic study in mice fed dosages of 0, 37.5, 150, 600, and 1,200 mg/kg/day with no carcinogenic effects observed under the conditions of the study up to and including 1,200 mg/kg/day (HDT) and a systemic NOEL of 37.5 mg/kg/day based on a reduction of body weight at 150 mg/kg/day.

5. A developmental study in rats fed dosages of 0, 24.4, 146, and 438 mg/kg/day (HDT) and a maternal toxicity NOEL of 146 mg/kg/day based on reduced food consumption, increased water intake, and mortality at 438 mg/kg/day (HDT).

6. A developmental study in rabbits fed dosages of 0, 70, 200, and 600 mg/kg/day with a developmental toxicity NOEL of 200 mg/kg/day based on an increase in resorptions and postimplantation loss; a decrease in the number of live fetuses and decreased fetal body weights at 600 mg/kg/day (HDT); a maternal toxicity NOEL of 70 mg/kg/day based on decreased body weight gain and food consumption at 200 mg/kg/day; and increased water consumption, increased mortality, and discoloration of the kidney at 600 mg/kg/day.

7. A two-generation reproduction study with rats fed dosages of 0, 50, 200, and 600 mg/kg/day with a reproductive NOEL of 200 mg/kg/day based on reduced pup viability and pup weight, and delay in development (pinna unfolding and eye opening) at 600 mg/kg/day with a maternal NOEL of 200 mg/kg/day based on reduced body weights at 600 mg/kg/day.

8. All Salmonella Assays testing the appropriate technical 3,7-dichloro-8-quinoline carboxylic acid were negative. The 3,7-dichloro-8-quinoline carboxylic acid was negative in the *in vivo* cytogenetics (Chinese hamster) at dose levels ranging from 2,000 to 8,000 mg/kg and did not induce unscheduled DNA synthesis in the UDS assay at levels ranging from 101 to 1,520 ug/ml.

The RfD based on a 2-year feeding study in mice (NOEL = 37.5 mg/kg/day) and using an uncertainty factor of 100 is calculated to be 0.38 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the overall U.S. population from the proposed uses is 0.001485 mg/kg bwt/day which represents 0.39 percent of the RfD. In the subgroup exposed to the highest dietary risk, nonnursing infants less than 1 year old, the TMRC is 0.010065 mg/kg bwt/day or 2.65 percent of the RfD. There are no published tolerances for this new chemical.

There are no desirable data lacking for this pesticide. There are currently no actions pending against the registration of this pesticide. The Health Effects Peer Review Committee (PRC) evaluated the carcinogenic potential of 3,7-dichloro-8-quinoline carboxylic acid on February 6, 1992. The PRC concluded that 3,7-dichloro-8-quinoline carboxylic acid should be classified as a Group C Carcinogen (possible human carcinogen) based on an increased incidence of pancreatic acinar cell adenoma in high-dose male rats. The incidence of acinar cell adenoma was statistically significant in the comparison of pairs with control and was outside the range reported for historical control (20 percent animals affected versus 0 to 18 percent for historical control). The PRC also determined that there was a significant dose-related increasing trend in pancreatic adenomas. Although no progression to malignancy was noted, pancreatic cell hyperplasia was observed in the male high-dose animals. Other findings, relating to the classification, indicated no corresponding increase in incidence of acinar cell adenoma of the pancreas in feamle rats. No other neoplastic lesions were spotted. In mice, 3,7-dichloro-8-quinoline carboxylic acid was not associated with increases in neoplasms in either sex at a dose level of 1,200 mg/kg/day (above the limit test value of 1,050 mg/kg/day). The PRC concluded that doses used in the mouse study were adequate for assessing the carcinogenic potential of 3,7-dichloro-8-quinoline carboxylic acid.

The above findings were referred to the FIFRA Scientific Advisory Panel (SAP) on June 25, 1992. The SAP found equivocal the observation of benign pancreatic acinar cell adenomas in male rats and concluded that the incidence of these adenomas is not indicative of a compound-related response. The Panel recommended that 3,7-dichloro-8-quinoline carboxylic acid be classified as a Group D carcinogen based on lack of evidence for carcinogenicity in two animal species. The Panel's classification was based on the small sample size in the high-dose group; difficulty in differentiating hyperplasia from adenoma, which the SAP said was actually a continuum (biological potential of both hyperplasia and adenoma may be the same); lack of detection of sessions at necroposy (compound-related tumors are typically detected grossly); lack of consistent sample size of pancreatic tissue examined; and the incidence of pancreatic tumors in high-dose test animals (20 percent) was just outside the historical range (0 to 18 percent).

A second PRC (August 26, 1992) reviewed the conclusions and comments of the SAP and agreed to classify 3,7-dichloro-8-quinoline carboxylic acid as a Group D carcinogen because the animal evidence on carcinogenicity was equivocal (not classificable as to human carcinogenicity).

The pesticide is useful for the purposes for which these tolerances are sought and capable of achieving the intended physical or technical effect. The nature of the residue is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology—GC chromatography using DB-5 as a stationary phase and electron capture detection—is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1138C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232).

There are currently no actions pending against regulation of this chemical. Any secondary residues occurring in meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep, milk, eggs, or poultry fat, meat, and meat byproducts will be covered by the tolerances in this section.

Based upon the information cited above, the Agency has determined that the establishment of a tolerance by amending 40 CFR part 180 will protect the public health and use of the pesticide in accordance with the terms of the food additive regulation amending 40 CFR part 186 will be safe. Therefore, the tolerances and food additive regulation are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 92 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statment to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Parts 180 and 186**

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 9, 1992.

**Dougals D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By adding new § 180.463, to read as follows:

**§ 180.463 3,7-Dichloro-8-quinoline carboxylic acid; tolerances for residues.**

Tolerances are established for residues of the herbicide 3,7-dichloro-8-quinoline carboxylic acid in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.05 |
| Cattle, mbyp | 0.05 |
| Cattle, meat | 0.05 |
| Eggs | 0.05 |
| Goats, fat | 0.05 |
| Goats, mbyp | 0.05 |
| Goats, meat | 0.05 |
| Hogs, fat | 0.05 |
| Hots, mbyp | 0.05 |
| Hogs, meat | 0.05 |
| Horses, fat | 0.05 |
| Horses, mbyp | 0.05 |
| Horses, meat | 0.05 |
| Milk | 0.05 |
| Poultry, fat | 0.05 |
| Poultry, mbyp | 0.1 |
| Poultry, meat | 0.05 |
| Rice grain | 5.0 |
| Rice, straw | 12.0 |
| Sheep, fat | 0.05 |
| Sheep, mbyp | 0.1 |
| Sheep, meat | 0.05 |

## PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 346.

b. By adding new § 186.1860, to read as follows:

**§ 186.1860 3,7-Dichloro-8-quinoline carboxylic acid.**

A tolerance is established to permit residues of the herbicide 3,7-dichloro-8-quinoline carboxylic acid in or on the feed commodity rice bran at 15.0 ppm when present therein as a result of application of the herbicide to the growing crop.

[FR Doc. 92-25411 Filed 10-20-92; 8:45 am]

BILLING CODE 6560-50-F

## 40 CFR Part 271

**[FRL-4525-3]**

## Alabama; Final Authorization of Revisions to State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the provisions contained in Non-HSWA Cluster V, and the Toxicity Characteristic Leaching Procedure (TCLP), a HSWA requirement. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Alabama's applications and has made a decision, subject to public review and comment, that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste program revisions. Alabama's applications for program revisions are available for public review and comment.

**DATES:** Final authorization for Alabama's program revisions shall be effective December 21, 1992 unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Alabama's program revision applications must be received by the close of business, November 20, 1992.

**ADDRESSES:** Copies of Alabama's program revision applications are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36130: (205) 271-7737; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Narindar Kumar at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347-2234.

**SUPPLEMENTARY INFORMATION:**

### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

### B. Alabama

Alabama initially received final authorization for its base, RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, and July 12, 1992. On January 14, 1991, Alabama submitted program

revision applications for additional program approvals. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's applications and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision up until November 20, 1992. Copies of Alabama's applications for these program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Alabama's program revisions shall become effective December 21, 1992, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Alabama is today seeking authority to administer the following Federal requirements promulgated on July 1, 1988–June 30, 1989, and on March 29, 1990.

| Federal requirement | FR Reference | Federal promulgation date | State authority |
|---|---|---|---|
| Identification and listing of hazardous waste; treatability studies sample exemption | 53 FR 27290 | 7/19/88 | 335-14-1.02(1)<br>335-14-2-.02(1)<br>(4)(e)1.(i)(ii)(iii)<br>335/-14-2-.01<br>[4)(e)2.(v)(vi)<br>3 3 5 - 1 4 - 2 . 0 1 ( 4 )<br>(e)3.(4)(f)-11 |
| Hazardous waste management system; standards for hazardous waste storage and treatment tank systems. | 53 FR 34079 | 9/2/88 | 335-14-1-.02(1)<br>335-14-5.07(5)<br>335-14-5-.10<br>335-14-6-.07(1)<br>(b)2<br>335-14-6-.07(5)<br>335-14-6-.10(1)(a) 1(b)(4)(f)3 |
| Identification and listing of hazardous waste; and designation reportable quantities, and notification. | 53 FR 35412 | 9/13/88 | 335-14-2-.04(3)<br>335-14-2-App. VII |
| Statistical methods for evaluating ground water monitoring data from hazardous waste facilities | 53 FR 39720 | 10/11/88 | 335-14-5-.06<br>2(a)1.(2)(a)2.<br>(3)(8)(a)1. (8)(a)1.(i).<br>(8)(h)(1-5)<br>335-14-5-.06(8)(i)1-6<br>335-14-5-.06(9)(j)<br>335-14-5-.06(9)(c-g) |
| Identification and listing of hazardous waste; removal of iron dextran from the list of hazardous wastes. | 53 FR 43878 | 10/31/88 | 335-14-2-.04(4)(f)<br>335-14-2, App. VIII |
| Identification and listing of hazardous waste; removal of strontium sulfide from the list of hazardous wastes. | 53 FR 43881 | 10/31/88 | 335-14-2-.04(4)(e)<br>Appendix VIII |
| Standards for generators of hazardous wastes; manifest renewal | 53 FR 45089 | 11/8/88 | 335-14-3-.02(1)(a)<br>Appendix I |
| Amendment to requirements for hazardous waste incinerator permits | 54 FR 4286 | 1/30/89 | 335-14-8-.06(2)(d) |
| Changes to interim status facilities for hazardous waste management permits; modifications of hazardous waste management permits; procedures for post-closure permitting (selected portions). | 54 FR 9596<br>270.1(c)<br>270.10(c)<br>270.29<br>270.72 | 3/7/89<br>270.23 | 335-14-8.01(1)(c)<br>335-14-8-.02(1)(c)<br>335-14-8-.02(20)<br>335-14-8-.07(3)(a)4.<br>5.(3)(b)1-6<br>335-14-8-.07(4)(f)<br>335-14-8-.07(4)(g) |
| Toxicity characteristic (TC) revision | 53 FR 11798 | 3/29/90 | 335-14-2-.01(4)(b)6.(i)<br>335-14-2-.01(4)(b)9<br>335-14-2-.01(4)(b)1<br>335-14-2-.01(8)<br>335-14-2-.03(5)(a)(5)(b)<br>335-14-2-.04(1)(b)<br>335-14-2 Appendix II<br>335-14-6-.13(4)(a)<br>335-14-9 Appendix I |

During EPA's review of Alabama's application for the TCLP Rule, a concern arose pertaining to the difference in the effective date of Alabama's TCLP Rule (12/6/90) and the effective date of the Federal TCLP Rule (9/25/90) and its impact on the regulated community. A later State effective date/submission deadline for its counterpart to a HSWA listing or characteristic has no effect on whether a facility qualifies for RCRA interim status. A facility must qualify for RCRA interim status by the Federal deadline, which because of HSWA, becomes the compliance date for facilities in all States simultaneously. RCRA Section 3009 and 40 CFR 271.1(j) and 271.25 preclude a State from enacting laws that would extend a HSWA compliance date that has already taken effect under Federal law.

Alabama is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

### C. Decision

I conclude that Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

*Compliance With Executive Order 12291*

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

*Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C 6912(a), 6926, 6974(b)).

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 92-25544 Filed 10-20-92; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 642

**[Docket No. 920246-2229]**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the western zone of the Gulf migratory group. NMFS has determined that the commercial quota for Gulf group king mackerel from the western zone was reached on October 17, 1992. This closure is necessary to protect the overfished Gulf king mackerel resource.

**EFFECTIVE DATE:** Closure is effective on October 18, 1992, through June 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-893-3161.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1992, through June 30, 1993) set the commercial allocation at 2.50 million pounds (1.13 million kg), divided into quotas of 1.73 million pounds (0.78 million kg) for the eastern zone and 0.77 million pounds (0.35 million kg) for the western zone. The boundary between the eastern and western zones is a line directly south from the Florida/Alabama boundary (87°31'06"W. longitude) to the outer limit of the EEZ.

Under § 642.22(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Fedeal Register.** NMFS has determined that the commercial quota of 0.77 million pounds (0.35 million kg) for the western zone of the Gulf migratory group of king mackerel was reached on October 17, 1992. Hence, the commercial fishery for Gulf group king mackerel from the western zone is closed effective 12:01 a.m., local time, October 18, 1992, through June 30, 1993, the end of the fishing year.

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ king mackerel from the western zone. A person aboard a charter vessel may continue to fish for king mackerel in the western zone under the bag limit set forth in § 642.28(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the western zone taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

### Classification

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

**Authority:** 16 U.S.C. 1801 *et seq.*

### List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-25522 Filed 10-16-92; 2:38 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 57, No. 204
Wednesday, October 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 710

### Voluntary Liquidation of Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NCUA is proposing to issue a revision to part 710 of its Rules and Regulations. The proposal sets forth requirements applicable to Federal credit unions (FCUs) entering voluntary liquidation pursuant to 12 U.S.C. 1766.

**DATES:** Comments must be received by December 21, 1992.

**ADDRESSES:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Courson, Special Assistant to the President, Asset Liquidation Management Center, National Credit Union Administration, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490, telephone: (512) 795–0999; or James J. Engel, Deputy General Counsel, Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, telephone (202) 682–9630.

**SUPPLEMENTARY INFORMATION:**

#### A. Background and Discussion

The proposed regulation makes the voluntary liquidation process more efficient and eliminates excessive reporting. Most recent voluntary liquidations are marginally solvent credit unions. A more efficient liquidation process will help maintain the solvency and avoid the necessity of involuntary liquidation and the resulting losses to the National Credit Union Share Insurance Fund (NCUSIF). Also, since members do not have access to their shares during the liquidation process, it is in the best interest of the members to effect liquidation within a short time period.

Comment is requested on all aspects of the proposed rule, as well as any other issues that might affect the voluntary liquidation of FCUs. For instance, should a credit union be required to develop a plan for the distribution of assets and payment of shares, and should a time limit for completing the liquidation, e.g., one year, be imposed?

In addition, comment is requested on whether the rule, or portions thereof, such as those provisions requiring notification to a Regional Director, should be made applicable to federally-insured state-chartered credit unions. Compliance with state law would still be required.

#### B. Section-by-Section Analysis

*Section 710.0 Scope*

This section has been reworded to reference requirements, rather than procedures, to be followed for a FCU to enter voluntary liquidation. Detailed procedures are to be included in an update of the Voluntary Liquidation Manual which will be written by staff after this rule is made final.

*Section 710.1 Definitions*

A definition of "voluntary liquidation" is added as proposed subsection (a) to clarify the activities involved in a voluntary liquidation, such as the sale and collection of assets, payment of liabilities, and distribution of shares. The delegation to a liquidating agent was deleted from the definition since this is covered in proposed § 710.2. "Liquidation date" is redesignated as subsection (b) and is changed from the date the FCU board approves presenting the question of liquidation to the members to the date of membership vote. This change reflects general state corporate law requiring shareholder vote for dissolution to become effective. The definition of "Liquidating Agent" is redesignated subsection (c) and the delegation of authority covered in proposed § 710.2(b) is deleted.

*Section 710.2 Responsibility for Conduct of Voluntary Liquidation*

Proposed § 710.2 is, for the most part, a consolidation of current §§ 701.2 and 701.5. Current, § 710.2 requires that the Regional Director be notified within 10 days of the board of directors' vote to present the question of liquidation to the members. As proposed in subsection 710.2(d), the time frame for notification is reduced from 10 days to three days. It is proposed that financial statements be included with the notification.

Proposed § 710.2(b) specified that the board of directors may appoint NCUA or another party as liquidating agent.

The requirement in § 710.5(d) that the board or liquidating agent appoint a custodian for the records was moved to proposed § 710.7, which deals with retention of records.

*Section 710.3 Approval of the Liquidation Proposal by Members*

Proposed subsections (a) and (b) of § 710.3 are very similar to the language in subsections (a) and (b) of existing § 710.3. The only substantive difference is that the board of directors is obligated to act *promptly* to obtain the members' approval of the liquidation proposal.

Proposed subsection 710.3(c) is derived from existing § 710.4 regarding the ability of the FCU's board of directors to rescind the liquidation and resume operations. Accordingly, § 710.4 is deleted. If the members do not approve the liquidation, it is proposed that within seven days the board of directors rescind its original resolution to present the question of liquidation and resume operations or the board of directors may resubmit the liquidation question to the members. Proposed subsection (d) adds the requirement, if the members approve the liquidation, that neither the members nor the board of directors may rescind the liquidation unless the Regional Director concurs.

Proposed subsection (e) requires that the Regional Director be notified of the results of the membership vote within three days rather than 10 days as currently required.

*Section 710.4 Transaction of Business During Liquidation*

This proposed section is a streamlined version of the current § 710.6. Existing § 710.6(a) is divided into proposed subsections (a) and (b) of proposed § 710.4. Reference to the permissible types of short-term investments to be made under existing § 710.6(b) is deleted as unnecessary. Existing § 710.6(c) is restated as proposed subsection 710.4(c) with no substantive changes.

*Section 710.5 Notice of Liquidation to Creditors*

Proposed § 710.5 expands upon existing § 710.7, which requires mailing a notice of liquidation to all known creditors with instructions to submit their claims within 120 days. This section was expanded to require a published notice to creditors similar to the notice required for Title I involuntary liquidations. The proposal requires the notice to be published three times in three weeks, and claims are to be filed within 30 days of the first publication. This notice period is shorter than Title II requirements for involuntary liquidations. A short notice period is important in a voluntary liquidation since the share payout cannot be completed until creditor claims are resolved.

*Section 710.6 Distribution of Assets*

The proposed § 710.6 combines existing § 710.9 and 710.10. The requirement in § 710.9 to obtain the Regional Director's approval for partial distribution has been eliminated. Section 710.6(b) of the proposed regulation clarifies that the pro rata distribution of assets is based on the total amount in each share account and not on even share dollars. Also, the requirement in § 710.10(b) to verify share balances to participate in the share payout was eliminated. This is no longer a requirement in involuntary liquidations. The requirement in § 710.10(d) to promptly notify the Regional Director when the final distribution is started was changed to a notification within three days.

*Section 710.7 Retention of Records*

Proposed subsection 710.7(a) contains the requirement for appointment of a custodian currently found in § 710.5(d). Proposed subsection 710.7(b) is based on existing § 710.13. However, the records retention period was expanded from three to five years. Section 120(c) of the Federal Credit Union Act allows the NCUA Board to destroy records of any Federal credit union in its possession five years from the date of cancellation of the charter. While the records of a Federal credit union involved in a voluntary liquidation may not be in the possession of NCUA, it would seem that the requirements should be the same for all Title I liquidations.

*Section 710.8 Certificate of Dissolution and Liquidation*

Proposed § 710.8 is based on existing § 710.14. The existing section, Cancellation of Charter, is retitled in the proposed rule and provisions for cancellation of the charter are eliminated. Procedures for the cancellation of charters are internal to NCUA and do not need to be a matter of regulation. The requirement for cancellation of charter is contained in section 120(b)(5) of the Federal Credit Union Act.

*Other Deletions*

Existing §§ 710.8, Reports at Commencement and During Liquidation, and 710.11, Final Reports, are eliminated in the proposed regulation. Reporting needs differ in each case, and the reporting requirements of the existing regulation are out of date. Regional Directors can obtain sufficient information to monitor voluntary liquidations without requirements being listed in the regulations.

Also, existing § 710.12, Examination of Federal Credit Unions in Voluntary Liquidation, was eliminated. NCUA's authority to conduct examinations of Federal credit unions is clearly stated in section 120(b)(2) of the Federal Credit Union Act. There is no need to repeat the authority in the regulations.

**C. Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). As this rule deals with the voluntary liquidation of all FCUs, it has no significant economic impact on small credit unions as ongoing, continuing concerns. Therefore, the NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The Paperwork Reduction Act requires Federal agencies to responsibly carry out their information management activities in an efficient, effective, and economical manner. To assist in this goal, agencies are not permitted to conduct or sponsor the collection of information unless the agency has taken actions, including consultation with the Director of the Office of Management and Budget (OMB), to eliminate information collections which seek to obtain information available elsewhere within the Federal government; reduce to the extent practicable and appropriate the burden on persons who will provide information; and formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public. In addition, the agency must submit the proposed information collection request to OMB, together with justification and authority, and prepare a notice to be published in the **Federal Register** stating that the agency has made such submission and setting forth a title for the information colelction request, a brief description of the need for the information and its proposed use, a description of the likely respondents and proposed frequency of response to the information collection request, and an estimate of the burden (defined as the "time, effort, or financial resources expended by persons to provide information to a Federal Agency") that will result from the information collection request. Once the OMB approves the information collection request the agency may engage in the collection of information displaying the OMB control number on the request. An "Information collection request" is defined in the Act as "a written report form, application form, schedule, questionnaire, reporting or record keeping requirement, collection of information requirement, or other similar method calling for the collection of information."

Proposed part 710 eliminates some of the reporting requirements of the current rule. The remaining requirements were previously approved by OMB. (OMB Control No. 3133–0076.) Therefore, there is no requirement to seek approval from OMB.

*Executive Order 12612*

Executive Order 12512 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to Federal credit unions and therefore will not affect state interests.

**List of Subjects in 12 CFR Part 710**

Credit unions, Reporting and recordkeeping requirements, Voluntary liquidations.

By the National Credit Union Administration Board on October 13, 1992.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA proposes to amend 12 CFR part 710 as follows:

## PART 710—VOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS

Sec.
710.0 Scope.
710.1 Definitions.
710.2 Responsibility for Conducting Voluntary Liquidation.
710.3 Approval of the Liquidation Proposal by Members.
710.4 Transaction of Business During Liquidation.
710.5 Notice of Liquidation to Creditors.
710.6 Distribution of Assets.
710.7 Retention of Records.
710.8 Certificate of Dissolution and Liquidation.

Authority: 12 U.S.C. 1766(a), 1786, and 1787.

### § 710.0 Scope.

This part prescribes the requirements that must be followed to accomplish the voluntary liquidation of a Federal credit union.

### § 710.1 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Voluntary Liquidation* means the dissolution of a solvent Federal credit union with the assets being sold or collected, liabilities paid, and shares distributed under the direction of the board of directors or its duly appointed liquidating agent.

(b) *Liquidation Date* means the date the members vote to approve liquidation.

(c) *Liquidating Agent* means the person appointed by the board of directors to liquidate the Federal credit union.

### § 710.2 Responsibility for conducting voluntary liquidation.

(a) The board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for equitable distribution of the assets to the members.

(b) The board of directors may appoint NCUA or another person as liquidating agent and delegate all or part of the board's responsibility to such agent and authorize reasonable compensation for the services provided.

(c) The board of directors shall determine that the liquidating agent and all persons who handle or have access to funds of the Federal credit union are adequately covered by surety bond.

(d) Within three days after the decision of the board of directors to submit the question of liquidation to the members, the Regional Director will be notified in writing, setting forth in detail the reasons for the proposed action. A balance sheet and income statement as of the previous month end will be included with the notification to the Regional Director.

### § 710.3 Approval of the liquidation proposal by members.

(a) When the board of directors decides to present the question of liquidation to the members, it shall act promptly to obtain the members' approval.

(1) The members shall be given advance notice of the membership meeting at which the liquidation proposal is to be submitted, in accordance with the provisions of Article V of the Federal Credit Union Bylaws. The notice shall:

(i) Inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot to be received no later than the time and date indicated on the notice.

(ii) Include or be accompanied by a ballot for the liquidation proposal.

(b) The liquidation proposal must be approved by the affirmative vote of a majority of the Federal credit union members who vote on the proposal.

(c) If the members do not approve the liquidation, the board of directors must decide within seven days that the Federal credit union should resume operations and rescind its original resolution to present the question of liquidation to the members, or if good cause exits, the board of directors may resubmit the question of liquidation to the members.

(d) If the members approve the liquidation, neither the members nor the board of directors may rescind the decision to liquidate unless the Regional Director concurs in the recision.

(e) The Regional Director will be notified in writing of the results of the membership vote on the voluntary liquidation proposal within three days of the date of the vote.

### § 710.4 Transaction of business during liquidation.

(a) Immediately upon decision by the board of directors to present the question of liquidation to the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be suspended pending action by the members on the proposal to liquidate. Collection of loans and interest and payment of necessary expenses will continue.

(b) Upon approval of the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be discontinued permanently. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation.

(c) Approval of the Regional Director must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders at par.

### § 710.5 Notice of liquidation to creditors.

(a) When approval for liquidation is obtained from the members, the board of directors or the liquidating agent shall cause notice to be given to creditors to present their claims. The notice shall be published once a week in each of three successive weeks, in a newspaper of general circulation, in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date.

(b) Within five days of the first publication specified in paragraph (a) of this section, a copy of the notice of liquidation shall be mailed to all creditors reflected on the records of the Federal credit union.

(c) Creditors shall be provided 30 days from the date of first publication of the notice specified in paragraph (a) of this section to submit their claims.

### § 710.6 Distribution of assets.

(a) A partial distribution of the Federal credit union's assets may be made to its members from cash funds available on authorization by the board of directors or liquidating agent.

(b) After all assets of the Federal credit union have been converted to cash or found to be worthless and all loans and debts owning to it have been collected or found to be uncollectible and all obligations of the Federal credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share account rather than on even share dollars.

(c) Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member. The checks shall be mailed to the members at their last known address or handed to them in person.

(d) Unclaimed share accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their

final distribution checks shall be trusteed to the state in which the member or creditor resides.

(e) The Regional Director will be notified in writing within three days when the final distribution of assets to the members is started.

**§ 710.7 Retention of records.**

(a) The board of directors or liquidating agent shall appoint a custodian for the Federal credit union's records which are to be retained after the final distribution of assets.

(b) All records of the liquidated Federal credit union necessary to establish that creditors were paid and that assets were equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

**§ 710.8 Certificate of dissolution and liquidation.**

Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Regional Director.

[FR Doc. 92-25395 Filed 10-20-92; 8:45 am]
BILLING CODE 7535-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-NM-177-AD]**

### Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the oxygen drop-out panels of the forward and aft cabin attendant positions. This proposal is prompted by reports that the lanyards for the oxygen masks and mask retainers at the forward and aft cabin attendant seats are too short for the attendants seated there to reach easily. This condition, if not corrected, could result in the cabin attendants seated in the forward and aft cabin attendant seats being unable to reach their oxygen masks in an emergency situation.

**DATES:** Comments must be received by December 16, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-177-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-177-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-177-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that the lanyards for the oxygen masks and mask retainers at the forward and aft cabin attendant seats are too short for the attendants seated there to reach easily. This condition, if not corrected, could result in the cabin attendants seated in the forward and aft cabin attendant seats being unable to reach their oxygen masks in an emergency situation.

Fokker has issued Fokker 100 Service Bulletin SBF100-35-003, dated March 23, 1992, that describes procedures for a modification of the oxygen drop-out panels at the forward and aft cabin attendants' positions. This modification entails removing mask retainers from the forward and aft cabin attendant oxygen panels and installing shorter lanyards on the mask assemblies of the oxygen panels, as applicable; installing a red flag assembly for the cabin attendant oxygen panels; and performing a functional test of oxygen drop-out panels. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive (BLA) 92-058, dated April 24, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the oxygen drop-out panels of the forward and aft cabin attendant positions. The actions would be required to be accomplished in

accordance with the service bulletin described previously.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $223 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $25,438, or $553 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92–NM–177–AD.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11365, inclusive, and 11367; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure that the cabin attendants seated in the forward and aft cabin attendant seats can reach their oxygen masks in emergency situations, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the oxygen drop-out panels of the forward and aft cabin attendant positions, in accordance with Fokker 100 Service Bulletin SBF100–35–003, dated March 23, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 15, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–25521 Filed 10–20–92; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 92–NM–178–AD]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require an inspection of the auxiliary power unit (APU) fuel supply tube assembly to determine minimum clearance between the tube and the adjacent airplane structure, and replacement of the assembly, if necessary. This proposal is prompted by a report that the currently installed APU fuel supply tube shroud is positioned such that it can come in contact with the airplane structure. The actions specified by the proposed AD are intended to prevent chafing in the area of the shroud and subsequent leaking from the fuel line couplings and the shroud, which could result in a fire within the rear fuselage area.

**DATES:** Comments must be received by December 16, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–178–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

*Discussion:* The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that the shroud of the APU fuel supply line, in one instance, has come in contact with the airplane structure. This can lead to chafing in this area, which could damage the shroud. The shroud is the outer tubing which guards primary tubing from damage and prevents leakage of the primary tube from entering the cabin. If the fuel line and the shroud leak, the fuel could enter the rear fuselage. This condition, if not corrected, could lead to fire within the rear fuselage.

Fokker has issued Fokker 100 Service Bulletin SBF100–28–022, dated December 13, 1991, which describes procedures for a one-time inspection of the APU fuel supply tube assembly for minimum clearance between the tube assembly and aircraft structure, and installation of a new APU fuel supply tube assembly. Replacing the existing APU fuel supply tube assembly with a new one having a different shape and a larger lead-through hole in the APU compartment structure will prevent fuel leaks and potential fire. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive (BLA) 92–015, dated January 24, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the APU fuel supply tube assembly to determine minimum clearance between the tube assembly and the adjacent airplane structure, and replacement of the assembly, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,540, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92–NM–178–AD.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11244 thru 11339, inclusive, and 11341 thru 11351, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent fuel leakage in the rear fuselage, accomplish the following:

(a) Within 6 months after the effective date of this AD, conduct an inspection of the auxiliary power unit (APU) fuel supply tube assembly to determine minimum clearance between the tube assembly and the aircraft structure, in accordance with Fokker Service Bulletin SBF100–28–022, dated December 13, 1991.

(1) If the clearance is less than 3 mm at any point, prior to further flight, replace the APU fuel supply tube assembly with a new assembly, in accordance with the service bulletin.

(2) If the clearance is 3 mm or more at all points, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 15, 1992.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 92–25539 Filed 10–20–92; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 346 and 381**

**[Docket No. RM92-17-000]**

## Elimination of Certain Filing Fees; Proposed Rulemaking

October 15, 1992.

**AGENCY:** Federal Energy Regulatory Commission (Commission).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing to amend its regulations by eliminating certain fees for services and benefits provided by the Commission under its jurisdictional statutes. The Commission is authorized by the Independent Offices Appropriations Act of 1952 and the Omnibus Budget Reconciliation Act to establish annual charges and fees for services and benefits it provides. This proposed rule would eliminate certain fees in 18 CFR parts 346 and 381 and allow the Commission to recover costs associated with these filings as part of the annual charges assessed each year.

**DATES:** Comments are due on or before November 20, 1992.

**ADDRESSES:** An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM92-17-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Alan M. Briskin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, (202) 208-0457.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 9 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street NE., Washington, DC 20426.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise its fee regulations in parts 346 and 381 by eliminating certain filing fee requirements. This proposed rule will streamline filing requirements, eliminate artificial barriers to filings that may be in the public interest, and reduce the Commission's administrative burden. In addition, the Commission is inviting comments on whether to substitute a different approach for the current methodology for annual adjustments to its filing fees.

### II. Background

#### *A. Statutory Authorities for Assessing Filing Fees and Annual Charges*

The Commission currently assesses filing fees and annual charges under several statutes. Title V of the Independent Offices Appropriation Act of 1952 (IOAA)[1] authorizes the Commission to charge filing fees for special benefits provided to identifiable persons. The filing fees are based on the cost to the agency of the agency's services.[2] The Commission's existing filing fees in part 346 and 381 of the regulations implement the IOAA and recover part of the Commission's cost for certain services to gas, oil, and electric companies which make filings with the Commission.[3]

The Omnibus Budget Reconciliation Act of 1986 (OBRA) requires the Commission to recover all of its costs for the fiscal year through annual charges and fees.[4] Pursuant to the OBRA, the Commission assesses and collects fees and annual charges in the fiscal year in amounts equal to all of the costs incurred by the Commission during that fiscal year. The OBRA further provides that the fees or annual charges assessed will be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

#### *B. Description of FERC's Current Cost-Recovery Methods*

The Commission currently assesses regulated companies both filing fees and annual charges. The annual charges are designed to recover all costs not recovered through filing fees.

The Commission's filing fees in part 346 and 381 of the regulations account for certain recoverable costs associated with the processing of the specified applications and filings under the Commission's jurisdictional statutes. Each fiscal year the Commission updates the fees in part 381 according to the formula in § 381.104(c), which states: "The formula for determining each fee is the actual workmonths dedicated to a given fee category for the three previous fiscal years divided by the number fo actual completions in three previous fiscal years multiplied by the average cost per workmonth in the three previous fiscal years."[5]

The filing fees are based upon the costs attributable to a particular Commission service. This embraces direct costs, such as the salaries of the employees who review the applications or filings, as well as the indirect costs that the Commission expends in its reviews: As the Fifth Circuit has stated:

> [Employees] must be supplied [with] working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that * * * [they are] hired, paid on a regular basis, and provided specialized training courses. Those and other costs such as depreciation and interest on plant and capital equipment are

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[1] U.S.C. 9701.

[2] See *New England Power Co.* v. *FPC*, 151 U.S. App. D.C. 371, 374-375, 467 F.2d 425, 428-429 (1972), *aff'd*, 415 U.S. 345 (1974).

[3] 18 CFR parts 346 and 381; see also Order No. 360, 49 FR 5074 (Feb. 10, 1984), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,542 (Feb. 6, 1984); Order No. 361, 49 FR 5083 (Feb. 10, 1984), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,543 (Feb. 6, 1984); Order No. 395, 49 FR 35348 (Sept. 7, 1984), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,609 (Oct. 31, 1984); Order No. 433, 50 FR 40332 (Oct. 3, 1985), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,662 (Oct. 3, 1985); Order No. 435, 50 FR 40347 (Oct. 3, 1985), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,663 (Sept. 30, 1985).

[4] See Joint Explanatory Statement of the Committee of Conference to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, reprinted in 1986 U.S.C.C.A.N. 3607, 3883.

[5] Under formula, the workmonths reported for a class of docketed activity are added to that class's pro rata share of the workmonths reported for relevant support activities. This figure, representing the total number of workmonths dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average amount of time required to complete one proceeding in that given class of docketed activity. Next, the average cost of a workmonth is calculated based on the Commission's fiscal year actual costs. Then, in order to determine the fee for a given class of activity, the average cost per workmonth is multipled by the average amount of time, measured in workmonths, required to complete one proceeding in that class.

all necessarily incurred in the process of reviewing an application.[6]

The Commission has included in its costs a proportionate share of the following items: Employee salaries and benefits; travel; transportation; rents; communications and utilities; printing; other support services; supplies; and equipment.

The Commission is required by OBRA to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." [7] Because the annual charges must be paid by the end of the fiscal year for which they are assessed,[8] the Commission, when it assesses the annual charges, does not yet have available to it the actual cost data for that fiscal year. The Commission must therefore estimate its year-end expenses.

The Commission allocates the costs incurred in administering its jurisdictional statutes to each of the following areas of responsibility: The administration of the Natural Gas Act and the Natural Gas Policy Act; the regulation of interstate oil pipelines under title 49 U.S.C.; the regulation of public utilities under parts II and III of the Federal Power Act; and, the administration of the Federal Power Act, part I. It then subtracts from the costs assigned to each area the estimated fee revenue, based on the past year's collections, in connection with that program. The remaining costs of administering each jurisdictional area are recovered through annual charges.

The Commission allocates its costs among the programs as follows. Costs that are directly related to a particular program (such as the cost of a contract for a gas pipeline flow analysis computer model) are charged against only that program, while indirect expenses (such as building rent, utilities and supplies) are distributed pro rata among all programs based on direct staff time as reflected in the Payroll Utilization Reporting System (PURS) data.[9]

After the Commission's program costs are determined, all filing fees attributed to each program are subtracted from the program costs because they represent costs already recovered.[10] Then, the Commission further allocates each program's costs among the companies being regulated. The Commission bases the regulated companies' annual charges on volumes of gas sold or transported, volume of jurisdictional electricity transactions, oil pipeline revenues, or hydropower capacity and generation. The Commission has stated that this approach accords with the expectation reflected in the Conference Report [11] that the Commission will "assess annual charges proportionately on the basis of annual sales or volumes transported." [12]

## III. Discussion

### *A. Elimination of Filing Fees*

The Commission is proposing to eliminate most filing fees and to recover Commission costs associated with these filings as part of the annual charges assessed each year. This proposal will simplify the filing process, expedite the consideration of filings, eliminate artificial barriers to actions that may be economically efficient and in the public interest, and to some extent reduce the Commission's administrative costs. At the same time, the resulting increase in annual charges will be modest and will have no effect on the financial health or competitive viability of any jurisdictional company. The elimination of most filing fees and the resulting increase in annual charges does not result in any additional revenues being collected by the Commission. Rather, there will simply be a change in the way the Commission collects those revenues.

The elimination of most filing fees will simplify the filing process by removing the filer's need to determine the appropriate fee classification under existing regulations. While this determination is often clear, there are situations in which choosing the proper classification may be difficult and confusing. Moreover, if a filing is accompanied by the wrong fee, it will not be processed until the correct fee is paid, thereby delaying actions that may be in the public interest.

Recovery of the Commission's costs through annual charges rather than filing fees has the advantage of enhanced convenience and certainty for jurisdictional companies. Fees for specific types of regulatory action are, by their nature, subject to greater fluctuation than is a single annual charge based on a pro rata share of the Commission's costs for an entire regulatory program.[13]

The removal of most fees will also encourage jurisdictional companies to make filings purely on the basis of their assessment of market and competitive factors. The presence of fees and the varying amounts of the fees will no longer create artificial incentives to take or avoid certain actions or to make one type of filing rather another.[14] The elimination of such impediments to market efficiencies and to expeditious and flexible regulatory action by the Commission is especially desirable as energy companies are expected to operate in an increasingly competitive environment.

Next, the elimination of most filing fees will lower some of the Commission's administrative costs, since fewer hours will be required to: (1) Verify, process, record, and deposit the individual fees collected; (2) calculate, change, issue, and notice the fees each year; and (3) respond to legal challenges to specific fees. Nor will it continue to be necessary to monitor all filings to determine if the proper fee has been paid, and to take appropriate action to collect the proper fee.

Finally, all the benefits described above will not be counterbalanced by burdensome increases in annual charges. As noted above, the increase in annual charges will be offset by a corresponding decrease in the revenues recovered from filing fees. The Commission recognizes that in any given year a particular pipeline or public utility may face a higher or lower increase in annual charges than it saves through the elimination of most fees for particular filings. In the long run, however, these increases and savings should balance out. Moreover, even in

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[6] *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223, 232 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980).

[7] 42 U.S.C. 7178.

[8] *Id.* at 7178(d).

[9] The United States Court of Appeals for the Fifth Circuit upheld a similar *pro rata* inclusion of indirect costs in the Nuclear Regulatory Commission's IOAA fees. Mississippi Power & Light Co., 601 F.2d at 231. See also *Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 250 U.S. App. D.C. 63, 77–78, 777 F.2d 722, 736–37 (1985); *National Cable Television Ass'n* v. *FCC*, 180 U.S. App. D.C. 233, 242, 554 F.2d 1094, 1101 (1976) ["The cost assessed may include a pro rata share of any expenses for regulatory activities which are necessary in order to grant [an FCC certificate of compliance]."]

[10] This approach of crediting fees to the programs as a whole rather than to each company finds support in the House Budget Report at 56, 1986 U.S.C.C.A.N. at 3652.

[11] Conference Report at 238, 1986 U.S.C.C.A.N. at 3868.

[12] Conference Report at 239, 1986 U.S.C.C.A.N. at 3884; See also House Budget Report at 54–55, 1986 U.S.C.C.A.N. at 3650–3651; H.R. 5360, 99th Cong., 2d Sess. 410(b) (1986).

[13] For example, certain pipeline tariff filing fees (under 18 CFR 381.205(a)(1)) have increased from $8,600 in 1990 to $8,080 in 1992; pipeline certificate application fees have risen in the same period from $26,260 to $34,440; and curtailment filing fees have increased from $6,270 to $11,432.

[14] For example, certain public utilities have complained that the fee for authorization under section 203 of the Federal Power Act to dispose of jurisdictional facilities with a value in excess of $50,000 discourages them from engaging in economically efficient sales of facilities when the value of the facility is small compared to the filing fee.

the short term, no jurisdictional company faces the kind of increases that could substantially affect its financial condition or ability to compete.

*B. Retention of Certain Filing Fees*

The Commission proposes to retain certain filing fees. These are: (1) Reviews of Department of Energy remedial orders (18 CFR 381.303); (2) reviews of Department of Energy denials of adjustment (18 CFR 381.304); (3) five Megawatt exemption applications under section 405 of the Public Utility Regulatory Policy Act (PURPA) (18 CFR 381.601); (4) reviews of jurisdictional agency determinations (18 CFR 381.402); (5) certifications of qualifying status as a small power production facility or cogeneration facility (18 CFR 381.505); and (6) interpretations by the Office of the General Counsel (18 CFR 381.305).

The fees for appeals of Department of Energy remedial orders and denials of adjustments are being retained because these Commission responsibilities are unrelated to the jurisdictional oil pipeline, gas, and electric regulatory programs. The extensive costs imposed on the Commission by these appeals should therefore not be borne by the jurisdictional entities through annual charges, since this is the kind of inter-industry subsidy Congress indicated the Commission should avoid:

> The Commission shall endeavor to assess and collect amounts necessary to cover the cost of each regulatory program area from those directly affected by the activities of the Commission in each area
>
> * * * * *
>
> [P]ublic utilities subject to the Federal Power Act * * * should not be expected to pay for the Commission's activities under the Natural Gas Act or the Natural Gas Policy Act.[15]

Similarly, the Commission is retaining the fee for 5 Megawatt exemption applications under section 405 of the PURPA. If the fee for this PURPA exemption were eliminated, it is doubtful whether the Commission's costs could be recovered through hydroelectric annual charges under part I of the Federal Power Act (FPA), because the 5 Megawatt exemption program is not under FPA part I, and FPA section 30(e) does not provide the Commission with authority independent of FPA section 10(e) to collect costs of administering FPA section 30. In addition, these exemption application costs should not be imposed as an inter-industry subsidy on oil pipelines, natural gas pipelines, or public utilities.

Next, since natural gas producers, cogenerators, and small power producers have all been exempted from paying annual charges, the fees paid by producers for reviews of jurisdictional agency determinations and by companies seeking qualifying status certifications should be retained.

The Commission also proposes to retain the fee for requests for written interpretations by the General Counsel. These requests may often be made by companies and persons not subject to annual charges. These requests also involve questions which involve narrow interests and primarily benefit only the requester.

*C. Direct Billing for any Applicant in any Category*

The Commission occasionally receives extraordinary filings that may be unusually extensive in scope and that present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. In the case of such extraordinary filings, the Commission reserves the option to order a direct billing procedure at the beginning of processing the filing or at any time up to one year after receiving a complete filing.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. Any decision to directly bill intervenors will be made by order of the Commission on a case-by-case basis. The Commission is not proposing to change its existing direct billing mechanism.

*D. Annual Adjustment of Fees*

As noted, the Commission currently measures the costs it incurs each year in handling specific types of filings and adjusts filing fees annually on the basis of a three-year rolling average of such costs. In view of this proposal to eliminate most filing fees, the Commission invites comments on whether it should continue the current annual recalculation process for the fees being retained. One alternative would be to calculate a constant factor representing the average time per completion for all years for which we have data, and to multiply it each year by the latest actual average employee cost. Other possible alternatives could be to establish a constant base fee to be updated annually for inflation. The base would be either: (a) The 1992 filing fee, or (b) a recalculated filing fee based on the average time per completion for all years for which we have data and current average employee costs. This base would be multiplied by an inflation factor, such as (1) the factors published by OMB in Circular A-11 (Adjusting Baseline Estimates for the Effects of Future Inflation) [16], or (2) some other inflation factor. Furthermore, actual expenses could be reexamined at longer intervals, such as every five years or so.

## IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [17] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[18] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

## V. Environmental Statement

The Commission concludes that issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[19] This rule would be procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[20]

## VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[21] However, this proposed

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[15] Conference Report at 238–239, 1986 U.S.C.C.A.N. 3868, 3883–3884.

[16] See OMB Circular A-11, section 23 and Exhibit 23B (July 2, 1992).

[17] 5 U.S.C. 601–612.

[18] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[19] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[20] See 18 CFR 380.4(a)(1).

[21] 5 CFR part 1320.

rule contains no information collection requirements and therefore is not subject to OMB approval.

### VII. Public Comment Procedures

The Commission invites all interested persons to submit written comments on the matters proposed in this NOPR, including any related matters of alternative proposals that commentors may wish to discuss. An original and 14 copies of the written comments must be filed with the Commission no later than 30 days after publication of this notice of proposed rulemaking in the Federal Register. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours, and should refer to Docket No. RM 92–17–000.

### List of Subjects

*18 CFR Part 346*

Pipelines, Reporting and recordkeeping requirements.

*18 CFR Part 381*

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission, under its authority 16 U.S.C. 825h and 15 U.S.C. 717o, proposes to amend chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Langdon concurred with a separate statement to be issued later.

**Lois D. Cashell,**

*Secretary.*

## PART 346—FEES

1. Part 346 is removed in its entirety.

## PART 381—FEES

2. The authority citation for part 381 is revised to read as follows:

**Authority:** 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; and 49 U.S.C. 1–27.

3. Subpart B and its heading are reserved. Sections 381.201 through 381.209, 381.301 through 381.302, 381.401, 381.403 through 381.405, 381.502 through 381.504, and 381.506 through 381.512, are removed.

[FR Doc. 92–25511 Filed 10–20–92; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Chapter I

**[Docket No. 92N–0251]**

## Electronic Identification/Signatures; Electronic Records; Request for Information and Comments; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period for the advance notice of proposed rulemaking as to whether the agency should propose regulations that would, under certain circumstances, accept electronic identification or electronic signatures in place of handwritten signatures where signatures are called for in title 21 of the Code of Federal Regulations (CFR), and where the electronic form of the signature bearing record is allowable by the regulations. The decision on whether to propose such regulations will be based on information and comments submitted in response to the advance notice of proposed rulemaking that was published in the **Federal Register** of July 21, 1992 (57 FR 32185). This document extends for 60 days the time for submission of comments on the advance notice of proposed rulemaking. This action is being taken in response to a request for an extension of time in order for the requester to prepare a response.

**DATES:** Written information and comments by December 18, 1992.

**ADDRESSES:** Submit written information and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Motise, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–295–8089. Electronic mail address via MCI(R) Telecommunications Corp. MCI(R) Mail: Name: Paul J. Motise, EMS:FDA, MBX: Motise, MBX: A1, MBX: FDACD. For help in addressing format contact the MCI(R) mail customer support line (1–800–444–6245).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 21, 1992 (57 FR 32185), FDA published the advance notice of proposed rulemaking with regard to whether the agency should propose regulations that would, under certain circumstances, accept electronic identification or electronic signatures in place of handwritten signatures where signatures are called for in title 21 CFR, and where the electronic form of the signature bearing record is allowable by the regulations. The decision on whether to propose such regulations will be based on information and comments submitted in response to the advance notice of proposed rulemaking.

The notice gave interested persons an opportunity to submit written comments on the advance notice of proposed rulemaking by October 19, 1992. FDA received a request dated October 7, 1992, from the Nonprescription Drug Manufacturers Association to extend the comment period an additional 60 days.

The agency has carefully considered the request and has decided to extend the comment period to allow interested persons to submit meaningful comments on the advance notice of proposed rulemaking. Accordingly, FDA is extending the comment period to December 18, 1992, in order for interested persons to have an ample opportunity to comment on this important matter. Interested persons may submit to the Dockets Management Branch (address above) written information and comments regarding this advance notice of proposed rulemaking. Two copies of the information and comments should be submitted, except that individuals may submit one copy. The information and comments are to be identified with the docket number found in brackets in the heading of this document. The information and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 16, 1992.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 92–25571 Filed 10–16–92; 4:04 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 34

RIN 1291-AA02

### Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Job Training Partnership Act of 1982, as Amended (JTPA); Correction

**AGENCY:** Office of the Assistant Secretary for Administration and Management, Labor.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking that was published Monday, October 19, 1992 (57 FR 47690). The proposed regulations related to the nondiscrimination and equal opportunity provisions of the Job Training Partnership Act of 1982, as amended (JTPA).

**FOR FURTHER INFORMATION CONTACT:** Danetta J. Fofanah, (202) 219-8927 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The proposed rule that is the subject to these corrections would implement section 167 of the Job Training Partnership Act of 1982 (JTPA), as amended, which contains the nondiscrimination and equal opportunity requirements of the JTPA. Section 167 of the JTPA was amended by the Job Training Reform Amendments of 1992 (Pub. L. 102-367, 106 Stat. 1021), which was signed into law on September 7, 1992. Section 167, as amended, requires that the Secretary of Labor issue final regulations implementing the requirements of section 167 within 90 days of the date of enactment of the Job Training Partnership Act of 1992.

#### Need for Correction

As published, the proposed rule contains errors which may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication on October 19, 1992, of the proposed regulations which were the subject of FR Doc. 92-25149, is corrected as follows:

##### § 34.1 [Corrected]

**Paragraph 1.** On page 47701, in the middle column, in § 34.1, paragraph (c), "Application of Subparts B, C, D, E of 29 CFR part 32" is corrected to read "Application of Subparts B, C, D, E of this part."

**Par. 2.** On page 47701, in the middle column, in § 34.1, paragraph (c)(1), "Subpart A of 29 CFR part 32" is corrected to read "Subpart A of this part."

**Par. 3.** On page 47701, in the middle column, in § 34.1, paragraph (c)(1), final line of the column, "subparts B-E of 29 CFR part 32" is corrected to read "subparts B-E of this part."

Signed at Washington, DC, this 19th day of October, 1992.

**Lynn Martin,**

*Secretary of Labor.*

[FR Doc. 92-25641 Filed 10-20-92; 8:45 am]

BILLING CODE 4510-23-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300266; FRL-4166-5]

RIN 2070-AC18

### Nonyl, Decyl, and Undecyl Glycosides; Tolerance Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that an exemption from the requirement of a tolerance be established for residues of a mixture of nonyl, decyl, and undecyl glycosides when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed regulation was requested by the Henkel Corp.

**DATES:** Comments, identified by the document control number [OPP-300266], must be received on or before November 20, 1992.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711L, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5180.

**SUPPLEMENTARY INFORMATION:** At the request of Henkel Corp., 300 Brookside Ave., Ambler, PA 19002, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of a nonyl, decyl, and undecyl glycoside mixture when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for nonyl, decyl, and undecyl glycosides will not need to be submitted. The rationale for this decision is described below.

1. A nonyl, decyl, and undecyl glycoside mixture would be expected to

be rapidly metabolized (and biotically degraded) to its primary constituents, glucose (a naturally occurring sugar) and nonyl, decyl, and undecyl alcohol.

2. D-(+)-glucose (dextrose) is exempt from the requirement of a tolerance under 40 CFR 180.1001(c) and (e).

3. Available toxicity data on nonyl, decyl, and undecyl alcohol do not demonstrate any unreasonable adverse effects. Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300266]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 6, 1992.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.1001 by amending paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(c) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * | * * * * * | * |
| Nonyl, decyl and undecyl glycoside mixture with a mixture of nonyl, decyl and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent $C_9$, 40 percent $C_{10}$, and 40 percent $C_{11}$ with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).. | ..... | Surfactant |
| * | * * * * * | * |

* * * * *

(e) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * | * * * * * | * |
| Nonyl, decyl and undecyl glycoside mixture with a mixture of nonyl, decyl and undecyl oligosaccharides and related reaction products (primarily decanol and undecanol) produced as an aqueous-based liquid (50 to 65 percent solids) from the reaction of primary alcohols (containing 15 to 20 percent secondary alcohol isomers) in a ratio of 20 percent $C_9$, 40 percent $C_{10}$, and 40 percent $C_{11}$ with carbohydrates (average glucose to alkyl chain ratio 1.3 to 1.8).. | ..... | Surfactant |
| * | * * * * * | * |

[FR Doc. 92-25520 Filed 10-20-92; 8:45 am]

BILLING CODE 6560-50-F

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Part 391**

**[FHWA Docket No. MC-87-17]**

**RIN 2125-AB91**

## Qualification of Drivers; Waivers; Diabetes

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent to issue waivers; request for comments.

**SUMMARY:** This notice announces the FHWA's intent to issue waivers, to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs), from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA requests comments on its proposed waiver program, but applications for waivers will not be accepted at this time. If a decision to proceed with the waiver program is made, the waivers would be granted only to those applicants who meet specific preconditions and comply with all the requirements of the waiver. Waivers would be issued for a period of three years or until resolution of a concurrent rulemaking action, whichever occurs first. Demographic and work-related data would be collected from the waived drivers and compared to similar data collected from a volunteer group of drivers who meet the current Federal driver qualification standard for diabetes and would serve as a control group. The FHWA will seek volunteers to participate in the control group. This action would preserve and expand job opportunities, at least temporarily, of those drivers who do not meet the current Federal diabetes standard, but have met the qualification standards of the State licensing agencies enabling them to obtain a license to operate CMVs legally in intrastate commerce. The waiver program would allow the FHWA to obtain objective data to be used in considering the concurrent rulemaking action to update the diabetes standard.

**DATES:** Comments must be received on or before November 20, 1992. After the comment period has closed and comments have been analyzed, the FHWA will publish, in the **Federal Register**, a notice of final disposition addressing the proposed waiver program.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. MC-87-17, room 4232, HCC-10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neill L. Thomas or Mrs. Elaine Viner, (202) 366-2981, Office of Motor Carrier Standards, or Mr. Ray Cuprill, Office of Chief Counsel, (202) 366-1351, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** Diabetes was not specifically addressed in the FMCSRs until April 22, 1970 (35 FR 6458). However, as early as 1939, the Interstate Commerce Commission required a urine glucose test as part of the required medical examination to determine whether a person was physically qualified to drive a CMV in interstate commerce. The 1939 standard provided that a person was qualified to drive if that person had "[N]o mental, nervous, organic, or functional disease, likely to interfere with safe driving." Interstate Commerce Commission's Motor Carrier Safety Regulations, § 1.21(b), Revised (1939).

The FHWA established its current standard for diabetes in 1970. This standard provides that a person is physically qualified to drive a CMV if the person "[h]as no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" 49 CFR 391.41(b)(3). The FHWA established the standard because the results of several accident studies [e.g., "Accident and Violation Rates of Washington's Medically Restricted Drivers," A. Crancer and L. McMurray (December 1967)] indicated that diabetic drivers had a higher accident rate than members of the general driving population.

### Rulemaking Background

The FHWA published an ANPRM (Docket No. MC-76) on March 28, 1977, to solicit comments concerning the driver qualification standard pertaining to insulin-using diabetics. See 42 FR 16452. The FHWA terminated this rulemaking on November 2, 1977, without amending the diabetes standard, after it was determined that the weight of available medical evidence supported a continuation of the prohibition against insulin-using diabetics driving CMVs in interstate commerce. See 42 FR 57488.

In 1986, petitions for rulemaking were accepted from two individuals, Mr. Troy Fuson and Mr. David L. Kendall, and the American Diabetes Association (ADA). The petitioners requested that the FHWA initiate rulemaking action to eliminate the blanket prohibition against drivers who are insulin-using diabetics and to allow such drivers to obtain a waiver on a case-by-case basis. The ADA petition requested that the FHWA develop a waiver program whereby physicians would make individual determinations of medical qualifications and the FHWA would use these medical evaluations to consider granting waivers to qualified individuals on a case-by-case basis.

The FHWA published an ANPRM (Docket No. MC-87-17) requesting comments from interested parties on November 25, 1987. See 53 FR 45204. On October 5, 1990, the FHWA published an NPRM proposing to revise its driver qualification requirements to allow certain insulin-using diabetics to operate CMVs in interstate commerce. *See* 55 FR 41028. Public support for the NPRM was predicated upon the belief that (1) recent medical advances allow people with diabetes to effectively manage their disease and, therefore, each diabetic's qualifications should be examined individually; (2) The current rule deprives certain individuals of the right to work in their chosen profession; and (3) the current blanket prohibition is discriminatory. Comments opposed to the NPRM centered around the following assertions: (1) the risks from implementing the proposed changes would outweigh any benefits gained (i.e., deaths, injuries, and property losses would increase as a result of allowing insulin-using diabetics to drive CMVs) and (2) the cost of implementing the changes would be prohibitive.

In October 1990, the FHWA contracted with the University of Pittsburgh to perform a risk assessment on insulin-using diabetics driving CMVs in interstate commerce. The contractor determined that there were about 968,000 insulin-using individuals between the ages of 20 and 64 years in the United States population. If insulin-using drivers were allowed to drive in interstate commerce without any restrictions placed on their eligibility, the data suggest that about 1420

individuals would seek employment as CMV operators each year. The contractor calculated that those 1420 insulin-using drivers would be involved in approximately 42 accidents (all types) each year. It was estimated that at least two-thirds of those 1420 drivers were operating CMVs in intrastate commerce, and, therefore, two-thirds of the hypoglycemia-related accidents projected by the risk assessment may occur without waivers being granted by the FHWA. This, the contractor stated, suggests that the number of additional accidents expected under the proposed rule change would be estimated at 14 per year. A copy of the complete report has been placed in FHWA Docket MC–87–17, for public review.

By letter dated February 7, 1992, Mr. Jerry Burnside wrote to the FHWA requesting a waiver from the CDL regulations because, as an insulin-using diabetic, he was denied the right to test for a CDL. The FHWA replied to Mr. Burnside on March 16, 1992, indicating that his petition for a CDL waiver would be treated as a petition for a waiver from the physical qualification requirements of the FMCSRs, specifically the diabetes standard. The waiver program proposed herein would address Mr. Burnside's petition. Copies of Mr. Burnside's petition and related correspondence have been included in the public docket.

**Diabetes and Commercial Motor Vehicles**

Diabetes mellitus is a prevalent chronic health condition in the United States today. When considering the operation of CMVs by insulin-using diabetics, it is important to consider the advent of hypoglycemia during such operation. If no remedial action is taken promptly, hypoglycemia can impair judgment and perception, and lead to loss of consciousness. It is axiomatic that good judgment and perception play an essential role in driving tasks. To prevent the obvious risk to highway safety that such a situation may represent, current regulations (49 CFR 391.41(b)(3)) preclude insulin-using diabetics from operating CMVs in interstate commerce.

The FHWA is aware that major medical advancements are being made in the control and monitoring of insulin-using diabetics, and, as discussed above, it has initiated a rulemaking effort to review its driver qualification standards in this area. The enactment of the Americans With Disabilities Act of 1990 (42 U.S.C. 12101–12213) reinforced the FHWA's responsibility to conduct a review of its physical qualification standards to ensure that these conform with current knowledge about the capabilities of persons with disabilities and currently available technological aids, and devices. Our efforts concerning the diabetes mellitus standard, however, have been hampered by a lack of empirical data in this area. Data have not been collected at the Federal level due to the existing diabetes restrictions on interstate operations. This is compounded by a lack of specific data collected by the 38 States that permit insulin-using drivers to operate CMVs in intrastate commerce. This situation has made an accurate study of the accident risk associated with hypoglycemia very difficult.

In view of the above, the FHWA proposes to initiate a waiver program for certain insulin-using diabetic drivers, which would allow the agency to gather useful and necessary data regarding the safe operation of CMVs. The program would allow the FHWA to analyze and compare a group of experienced, insulin-using drivers with a control group of drivers who meet the current Federal diabetes standard. The FHWA expects to obtain sufficient data to provide a reliable basis to establish, if warranted, a new diabetes standard in its concurrent rulemaking (Docket No. MC–87–17).

**Conditions**

In considering waivers, the FHWA must ensure that the issuance of diabetes waivers would not be contrary to the public interest and is consistent with the safe operation of CMVs. Waivers, therefore, would only be granted to those insulin-using persons who:

(1) Possess a currently valid CDL or now possess or have possessed a license to operate a CMV (non-CDL) after April 1, 1990;

(2) Have or had been operating a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding:

(i) The date of the application if the applicants are currently licensed to operate a CMV; or

(ii) The date (after April 1, 1990) the applicants last held a valid license to operate a CMV (i.e., a signed statement from the applicants' employer or a certified statement from the applicants, in the event the applicants were operating as a motor carrier);

(3) Have had a driving record for that three-year period that:

(i) Contains no suspensions or revocations of their drivers' licenses of the *operation* of *any* motor vehicle (including their personal vehicle) (do not include suspensions or revocations due to nonpayment of fines);

(ii) Contains no involvement in a reportable accident (as defined in 49 CFR 394.3) for which they received a citation for a moving traffic violation while operating a CMV;

(iii) Contains no convictions for a disqualifying offense or more than one serious traffic violation while driving a CMV which disqualified, or should have disqualified, them in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(iv) Contains no more than two convictions for any other moving traffic violations in a CMV;

(4) Have provided a board-certified or board-eligible endocrinolgoist with a complete medical history (including, but no limited to, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes, and follow-up reports) and reports of any hypoglycemic insulin reactions within the last three years, or from the date insulin use began, whichever occurred last;

(5) Have been examined by a board-certified or board-eligible endocrinologist (after the date of publication of a notice of final disposition in the **Federal Register** and a complete medical evaluation concerning their medical history and current status has been made, including, at a minimum:

(i) Fasting blood studies (glucose, glycosylated hemoglobin/Hb $A_{1c}$, including lab reference range) and urinalysis performed during the last six months;

(ii) A detailed report of insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken;

(iii) A determination that the applicants have not had, within the last three years:

(a) A hypoglycemic reaction that resulted in any change in mental status that would have been, in the physician's opinion, detrimental to safe driving (e.g., confusion); and

(b) A hypoglycemic reaction that resulted in loss of consciousness or in a seizure;

(iv) A medical determination that the applicants do not have *severe hypoglycemia* (i.e., repeated episodes of altered consciousness requiring the assistance of another person to regain control);

(v) A determination that the applicants do not have *hypoglycemic unawareness* (i.e., the inability to recognize the early symptoms of

hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness);

(vi) A determination that the applicants have been educated in diabetes and its control, thoroughly informed of and understand the procedures which must be followed to monitor and manage their diabetes and insulin administration, and which procedures should be followed if complications (hypoglycemia) occur;

(vii) A determination that the applicants have the ability and have demonstrated their willingness to properly monitor and manage their diabetes; and

(viii) A determination that the applicants' diabetes will not adversely affect those persons' ability to operate a CMV; and

(6) Have been examined by an ophthalmologist (after the date of publication of a notice of final disposition in the **Federal Register** to determine that the applicant has *no unstable proliferative diabetic retinopathy* (i.e. unstable advancing disease of blood vessels in the retina) and has stable visual acuity.

**Discussion**

As discussed earlier, the University of Pittsburgh's risk analysis projected that allowing insulin-using diabetics to operate in interstate commerce, without any restriction, would result in approximately 14 accidents per year (causally related to insulin-using diabetic conditions). The FHWA believes that restricting the issuance of waivers to only those drivers who meet the preconditions set forth above will preclude the accident involvement projected by the University of Pittsburgh and there will, therefore, be no additional safety risk associated with this proposed waiver program. The FHWA is, therefore, proposing to introduce the enumerated preconditions to ensure that the waiver program is consistent with the safe operation of CMVs.

The proposed waiver program would not be a substitute for the substantive rulemaking currently under consideration. The FHWA believes that the University of Pittsburgh study, even with public comment to the open docket, provides an insufficient foundation to amend the diabetes standard. While it is the FHWA's intent to re-analyze the comments received thus far and consider any new comments to the open docket, the Pittsburgh study illuminated a problem—the lack of empirical data on the effect diabetes mellitus has on CMV safety, especially where insulin-suing diabetics are concerned. The proposed waiver program would enable the FHWA to conduct a study comparing a group of experienced, insulin-using diabetic drivers with a control group of experienced drivers who meet the requirements of the FMCSRs. This study would provide the empirical data that have previously been unavailable.

After a thorough review of the comments submitted in response to this notice, a notice of final disposition will be issued and published in the **Federal Register**. If the FHWA decides to proceed with the waiver program, applications would then be accepted for a period of 180 days. The waiver applications would be processed as quickly as possible. If granted, waivers would be issued for a period of three years or until the concurrent rulemaking addressing the FHWA's diabetes requirements is completed, whichever occurs first.

The FHWA recognizes that States are already incorporating the more stringent Federal diabetes standard into their requirements. This is being done because of the condition imposed on the receipt of Motor Carrier Safety Assistance Program (MCSAP) funds and the certification required of applicants for the CDL. The States receiving funds under the MCSAP have been allowed to grandfather the medical requirements for intrastate drivers as long as the condition remains under control. Due to the rulemaking to incorporate the Tolerance Guidelines into 49 CFR part 350 (57 FR 40962, September 8, 1992), and the medical studies being conducted by the FHWA, the grandfather provision has been extended for one year to March 31, 1993. The proposed Tolerance Guidelines would allow States latitude in establishing waiver programs for intrastate drivers and building a data base which should be beneficial to the FHWA in future rulemakings involving medical qualifications. The States would, however, under the MCSAP, continue to be required to meet the intrastate Tolerance Guidelines. Some States have already changed to the Federal standard. The FHWA hopes that such States would allow their qualified licensees to participate in the proposed waiver program. Those States may find it necessary to requalify drivers who are able to meet the conditions for waivers stated herein. Nothing contained in a subsequent notice of final disposition would require States to adopt a Federal diabetes waiver program for drivers who operate wholly in intrastate commerce.

**Application Information**

Applicants for a waiver from the insulin-using diabetes mellitus prohibition would be required to submit their applications on plain paper (there would be no application form), include all supporting documents, and use the format set forth below. Those drivers who volunteer for participation in the control group would be expected to furnish the same information, except that listed in items (2) through (4) under the heading "Supporting Documents."

*Vital Statistics*

Name of applicant (first name, middle initial, last name);

Address (street number and name);

City, State, and Zip Code;

Telephone Number (area code and number);

Sex (male or female);

Date of Birth (month, day, and year);

Age;

Social Security Number;

State Driver's License Number (name of issuing State and license number) (List all licenses held during the three-year period immediately preceding the date of the application or the three-year period immediately preceding the date you last held a valid license to operate a CMV.);

Driver's License Classification Code (if not a CDL classification code, specify what vehicles may be operated under such code); and

Driver's License Date of Issuance (month, day, and year).

*Experience*

Number of years driving straight trucks;

Approximate number of miles driving straight trucks;

Number of years driving tractor trailer combinations;

Approximate number of miles driving tractor trailer combinations;

Number of years driving buses; and

Approximate number of miles driving buses. (List the number of years and the number of miles driving separately for each category, as applicable.)

*Anticipated Post-Waiver Operations*

Your employer's name, address and telephone number, if applicable;

The type of vehicle you will operate (straight truck, tractor trailer combination, bus);

The commodities that will be transported (e.g., general freight, liquids in bulk (in cargo tanks), steel, dry bulk, large heavy machinery, refrigerated products);

The States in which you will drive;

The estimated number of miles you will drive per year;

The estimated number of daylight driving hours per week; and

The estimated number of nighttime driving hours per week;

*Supporting Documents*

Your application must include supporting documents showing that:

(1) You possess a currently valid CDL (i.e., a legible photostatic copy of both sides of the driver's license) or you now possess or have possessed a license to operate a CMV (non-CDL) after April 1, 1990 (i.e., a legible photostatic copy of both sides of the driver's license; or a certification from the State licensing agency);

(2) You have operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding:

(i) The date of the application if you are currently licensed to drive a CMV; or

(ii) The date (after April 1, 1990) you last held a valid license to operate a CMV (e.g., a signed statement from your present and/or past employer (on company letterhead), or a certified statement, signed by you, in the event you were operating as a motor carrier);

(3) Your driving record for that three year-period:

(i) Contains no suspensions or revocations of your driver's license for the operation of any motor vehicle (including your personal vehicle);

(ii) Contains no involvement in a reportable accident, as defined in 49 CFR 394.3, (while operating a CMV) for which you received a citation for a moving traffic violation;

(iii) Contains no convictions for a disqualifying offense (as defined in 49 CFR 383.51(b)(2)) or more than one serious traffic violation (as defined in 49 CFR 383.5) while driving a CMV which disqualified, or should have disqualified, you in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(iv) Contains no more than two convictions for any other moving traffic violations in a CMV;

(4) You have been examined by a board-certified or board-eligible endocrinologist (after the date of publication of a notice of final disposition in the **Federal Register**) and a complete medical evaluation concerning your medical history and current status has been made, including at a minimum:

(i) Fasting blood studies (glucose, glycosylated hemoglobin/Hb $A_{1c}$, including lab reference range) and urinalysis during the last six months;

(ii) A detailed report of insulin dosages and types, diet utilized for control, and any significant factors such as smoking, alcohol use, and other medications or drugs taken;

(iii) A medical determination that you do not have *severe hypoglycemia* (i.e., repeated episodes of altered consciousness requiring the assistance of another person to regain control);

(iv) A determination that you do not have *hypoglycemia unawareness* (i.e., the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness);

(v) A determination that you have been educated in diabetes and its control, thoroughly informed of and understand the procedures which must be followed to monitor and manage your diabetes, and what procedures should be followed if complications arise;

(vi) A determination that you have the ability and have demonstrated your willingness to properly monitor and manage your diabetes;

(vii) A determination that your diabetes will not interfere with your ability to safely operate a CMV;

(viii) Within the last three years, you have not had:

(a) A hypoglycemic reaction that resulted in any change in mental status that would have been, in the physician's opinion, detrimental to safe driving (e.g., confusion);

(b) A hypoglycemic reaction that resulted in loss of consciousness or in a seizure; and

(ix) You have been examined by an ophthalmologist (after the date of publication of a notice of final disposition in the **Federal Register** to determine that you do not have unstable proliferative diabetic retinopathy and you have stable visual acuity.

*Waiver Requirements*

There would be nine special conditions attached to the issuance of any waiver issued to an insulin-using diabetic driver. Each driver would be required to:

(1) Carry, use, and record the readings from a portable blood glucose monitoring device (one hour prior to and approximately every four hours while driving). Such monitoring is necessary to aid the driver in detecting changes in blood-glucose levels so that the driver may take corrective action. Make records of whole blood glucose concentrations available to any authorized enforcement official upon request;

(2) Carry and use, as necessary, a source of rapidly absorbable glucose;

(3) Carry insulin for use whenever necessary. The driver must also have available in the vehicle syringes (including needles), or a needle-free jet injector, or an infusion pump (including an ample supply of syringes, infusion sets, alcohol swabs, spare batteries, and ketone test strips, as appropriate). The driver must also carry regular syringes and conventional insulin in case the driver needs or wants to discontinue pump therapy for more than one hour;

(4) Report any citation for a moving violation involving the operation of a CMV to the FHWA within 15 days following issuance (photostatic copy of the citation issued will meet the reporting requirement);

(5) Report the judicial/administrative disposition of such charge to the FHWA within 15 days following the notice of disposition;

(6) Report any accident involvement whatsoever while operating a CMV to the FHWA within 15 days following the accident (include Federal, State, insurance company, and/or motor carrier accident reports);

(7) Submit any medical information derived from medical assistance or treatment arising from any accident involvement. (copy of the attending medical specialist's and laboratory reports would meet the reporting requirement);

(8) Submit documentation that you have been examined by a board-certified or board-eligible endocrinologist and an ophthalmologist each year, within 15 days before the anniversary date of the waiver issuance date, and that specialist has certified that your diabetic condition is currently under control and your vision deficiency has not worsened since the last examination required by the waiver; (Note: Monocular drivers who have been diagnosed as having stable proliferative diabetic retinopathy must be examined every 6 months); and

(9) Report to the FHWA by the 15th calendar day of each month (not including the month in which the waiver becomes effective):

(i) The number of miles driving a CMV during the preceding month;

(ii) The number of daylight hours and the number of nighttime hours driving a CMV during the preceding month; and

(iii) The number of days not operating a CMV during the preceding month.

All documentation described in items (4) through (9), above, would be required to be mailed to the FHWA's headquarters in Washington, DC. Failure to submit timely reports would be cause for cancellation of the waiver.

**Control Group Participants**

To successfully perform the comparative analysis which would be used to establish a basis for rulemaking action, a control group of drivers, the same size as or larger than the group of waived drivers, is necessary. The FHWA would, therefore, seek drivers who are currently qualified under the FMCSRs as volunteers for the control group. These volunteers would be asked to submit the same demographic and work-related information required from waiver applicants. The FHWA would seek the cooperation of all motor carriers, owner-operators, drivers, trade associations, and labor unions to encourage drivers to volunteer for participation in this very important study. The FHWA would pursue additional outreach efforts to enlist the necessary cooperation. Those drivers interested in participating in the control group would also submit the requested information to the FHWA's headquarters in Washington, DC.

Those drivers who voluntarily participate in the control group would be required to:

(1) Report any citation for a moving violation involving the operation of a CMV to the FHWA within 15 days following issuance (photostatic copy of the citation issued will meet the reporting requirement);

(2) Report the judicial/administrative disposition of such charge to the FHWA within 15 days following the notice of disposition;

(3) Report any accident involvement whatsoever while operating a CMV to the FHWA within 15 days following the accident (include Federal, State, insurance company, and/or motor carrier accident reports); and

(4) Report to the FHWA by the 15th calendar day of each quarter:

(a) The number of miles driving a CMV during the preceding quarter;

(b) The number of daylight hours and the number of nighttime hours driving a CMV during the preceding quarter; and

(c) The number of days not operating a CMV during the preceding quarter.

**Authority:** 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Issued on: October 2, 1992.

**T.D. Larson,**

*Administrator.*

[FR Doc. 92-25509 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-22-M

# Notices

Federal Register
Vol. 57, No. 204
Wednesday, October 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Stanislaus National Forest, CA; Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Exemption from Appeal; Deer Creek Fire Salvage EA, Mi-Wok Ranger District, Stanislaus National Forest.

**SUMMARY:** The Forest Service is exempting from appeal the decision related to the salvage of fire damage timber within the analysis area covered in the Deer Creek Fire Salvage EA.

The Ruby fire was started on September 7, 1992. It burned 3,460 acres. There are 2,883 acres of National Forest System land within the burn and a California spotted owl habitat area (SOHA), 95 percent of which was burned. The Deer Creek Sale Area includes approximately 1,689 acres of CAS land. The Forest Service proposes to salvage log approximately 15 million board feet (MMBF) of the dead and dying timber within this existing timber sale area.

The objective for this area is to promptly salvage the recently killed trees. Analysis of the area has been performed during the early to mid-1980's for timber sales, as well as the recent analysis to support the decision for the 1992 Deer Creek Multi-Product Insect Salvage sale. In addition to this, the recently completed emergency fire rehabilitation plan provides for methods to maintain productivity in the short-term. The Forest Service plans on issuing another decision which will replace the burned SOHA. The decision to replace the burned SOHA will amend the Forest Plan, will be issued separately from the salvage decision, and would be subject to appeal. Constraints and mitigation measures will ensure compliance with any applicable current California spotted owl direction and other habitat capability requirements. The salvage logging will not affect population viability or habitat distribution for the California spotted owl.

The fire burned intensely, so that large, contiguous areas will be harvested, leaving only reserved trees. Trees will be designated as reserve trees to provide for wildlife habitat and soil productivity needs. No roadless area, wilderness, or threatened or endangered species would be affected.

Terrain is suitable for tractor skidding and cable yarding systems. Approximately 1.5 miles of new road construction and the reconstruction of some existing road will be required.

The value and volume of lumber recovered from burned timber declines rapidly as the wood deteriorates. Thus, the prompt removal of affected timber minimizes value loss. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent economical removal.

If not removed in timber salvage operations, excessive numbers of dead trees can lead to heavy fuel concentrations. This compounds future fire suppression difficulty, which in turn increases the risk of further severe watershed disturbance. Prompt timber harvest can replace some ground cover consumed in the fire with logging slash. Harvest activities also create disturbance that helps break up fire-caused "hydrophobic" solids that inhibit water infiltration. The combination of creating ground cover and increasing the ability of soils to absorb water helps to initiate watershed recovery in the shortest time possible.

A decision on the proposed salvage is expected in October 1992. If delayed because of administrative appeal, it is likely economic value will decline with each passing month.

Pursuant to 36 CFR § 217.4(a)(11), it is my decision to exempt from appeal any decisions relating to the harvest and restoration of lands following fire induced timber mortality within the area analyzed by the Deer Creek Fire Salvage EA.

**EFFECTIVE DATE:** This decision will be effective October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be addressed to Ed Whitmore, Timber Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Janet L. Wold, Forest Supervisor, Stainslaus National Forest, 19777 Greenley Road, Sonora, CA 95370, (209) 533–3671.

Dated: October 9, 1992.

**Dale N. Bosworth,**

*Deputy Regional Forester.*

[FR Doc. 92–25248 Filed 10–20–92; 8:45 am]
BILLING CODE 3410-11-M

### Soil Conservation Service

### Days Crossroads Community Watershed, Clay County, GA

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Days Crossroads Community Watershed, Clay County, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Hershel R. Read, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 706–546–2272.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action, developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impacts on the environment.

As a result of these findings, Hershel R. Read, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this Project.

The project concerns plan to relieve human health, bodily injury, possible loss of life, and economic hardship problems caused by flooding. The planned works of improvement is 3,600 feet of floodway/channel to safety convey floodwaters through the Days Crossroads Community.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file an may be reviewed by contacting Dr. Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: September 24, 1992.

**Hershel R. Read,**

*State Conservationist.*

[FR Doc. 92-25496 Filed 10-20-92; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 31-92]**

### Foreign-Trade Zone 152; Burns Harbor, IN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 152, requesting authority to expand the zone to include a site in Gary, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 13, 1992.

FTZ 152 was approved on December 9, 1988 (Board Order 393, 53 FR 52454; 12/28/88), and expanded on March 9, 1992 (Board Order 563, 57 FR 9103; 3/16/92). The zone currently consists of two sites in the Burns Harbor/Gary, Indiana, area:

*Site 1:* (441 acres) within the Port of Indiana/Burns International Harbor, Porter County, Indiana.

*Site 2:* (12 acres) located at 201 Mississippi Street, within the Great Lakes Industrial Center, Gary, Indiana.

The applicant is now requesting authority to expand the general-purpose zone to include the Gary Regional Airport Complex, Gary, (Lake County), Indiana. The facility is owned and operated by the Gary Regional Airport Authority. The proposed zone site (390 acres) includes all airport property except runways and taxiways.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 21, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 6, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Administration Building, Burns International Harbor, 6600 U.S. Highway 12, Portage, Indiana 46368.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: October 15, 1992.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 92-25549 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DS-M

### International Trade Administration

**[A-549-502]**

### Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Amendment to Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of amendment to final results of antidumping duty administrative review.

**SUMMARY:** On August 26, 1992, the Department of Commerce ("the Department") published in the **Federal Register** the final results of an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covered the period March 1, 1988 through February 28, 1989.

Subsequent to the publication of the final results, petitioners alleged that the Department had made three ministerial errors. The Department has determined that one of these alleged errors is in fact a ministerial error.

We have corrected the error in question and recalculated the dumping margin, which has changed from 0.45 percent *ad valorem* to 0.48 percent *ad valorem* for the period under review. The dumping margin is still *de minimis.*

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 26, 1992, the Department of Commerce ("the Department") published in the **Federal Register** the final results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period March 1, 1988 through February 28, 1989 (57 FR 38668). The review covered shipments of this merchandise from Thailand to the United States during the period March 1, 1988 through February 28, 1989 by the Saha Thai Steel Pipe Co., Ltd. ("Saha Thai").

Subsequent to the publication of the final results, petitioners alleged, in a timely fashion, that the Department had made three ministerial errors. Petitioners therefore requested that we amend the final results of the review as published on August 26, 1992.

Section 353.28(d) of the Department's regulations defines a "ministerial error" as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial" (19 CFR 353.28(d)). The first error that petitioners alleged was a keypunching error involving the exchange rate for the second quarter of 1988. Petitioners claimed that foreign market values for that quarter were seriously undervalued as a result of this error. We agree with petitioners that the exchange rate for the second quarter of 1988 was keypunched incorrectly, and that a keypunch error constitutes a ministerial error as defined by 19 CFR 353.28(d), and have corrected the error in question.

The Department has determined that the other two ministerial errors alleged by the petitioners are not ministerial or even errors at all. Therefore, we did not amend the final results on those two points.

**Amended Final Results of the Review**

As a result of the correction, we have determined that a weighted-average dumping margin of 0.48 percent *ad valorem* exists for certain circular welded carbon steel pipes and tubes sold by Saha Thai during the period beginning on March 1, 1988 and ending on February 28, 1989. The dumping margin is *de minimis*.

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice for all shipments of the subject merchandise from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"): (1) The cash deposit rate for the reviewed company, Saha Thai, shall be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate shall continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this administrative review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate shall be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters shall be zero. Pursuant to the application of our rule regarding *de minimis* margins, this rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on the best information otherwise available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This amendment to the final results of administrative review and notice are in accordance with section 751(f) of the Act [19 U.S.C. 1675(f)] and section 353.28(c) of the Department's regulations [19 CFR 353.28(c)].

Dated: October 16, 1992.

**Rolf Th. Lundberg,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 92-25550 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DS-M

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[A-580-813]

## Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-2778.

**Preliminary Determination**

We preliminarily determine that certain welded stainless steel butt-weld pipe fittings from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of liquidation" section of this notice. The statutory deadline for the final determination is January 11, 1993. However, we may expedite this determination.

*Case History*

Since the initiation of this investigation on June 9, 1992, (57 FR 26645, June 15, 1992), the following events have occurred.

On June 11, 1992 the Department sent a cable to the American Embassy in Seoul, Korea requesting information on the names of any Korean companies, other than those listed in the petition filed in this investigation, that produce and export the subject merchandise to the United States, and their corresponding value and quantity of sales to the United States for the period December 1, 1991 to May 31, 1992.

On June 26, 1992 we received a response from the American Embassy in Seoul stating that none of the companies listed in the petition ever produced and exported the subject merchandise to the United States. However, the Embassy did state that Asia Bend C., Ltd. (Asia Bend), which was not included in the petition, exported the subject merchandise to the United States in 1991. According to export statistics from the Korean Stainless Steel Butt-Weld Pipe Fitting Industry provided in the Embassy's response, Asia Bend's exports to the United States accounted for approximately 89 percent of total Korean exports to the United States.

On July 6, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On July 8, 1992, the Department sent an antidumping duty questionnaire to Asia Bend, requesting value and quantity statistics of the subject merchandise exported to the United States. We received no response to our questionnaire.

We sent a second request for information on July 27, 1992, giving respondent until August 15 to respond. No response to this second request was ever received.

On July 15 and 18, 1992, the Department also sent questionnaires to every Korean company listed in the petition filed in this investigation, requesting information on the value and quantity of exports of the subject merchandise to the United States. We received responses from every company. Each response stated that the company did not export the subject merchandise to the United States during the period of investigation (POI) or at any other time.

On September 2, 1992, petitioners requested that the Department revert to best information available in this case because the only known manufacturer and exporter of the subject merchandise to the United States had refused to respond to repeated Department requests for information. Furthermore, petitioner argued that the Department should select the most adverse dumping duties possible, using the margins calculated in its petition.

*Scope of Investigation*

The products subject to this investigation are certain welded stainless steel butt-weld pipe fittings ("pipe fittings"), whether finished or unfinished, under 14 inches inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the

material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "Elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished fittings are beveled. Threaded, grooved, and bolted fitting are excluded from these investigations. The pipe fittings subject to this investigation are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

*Period of Investigation*

The period of investigation (POI) is December 1, 1991 through May 30, 1992.

*Best Information Available*

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of subject merchandise in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, the exporter of pipe fittings from Korea did not do so.

During the course of this investigation, the Department has encountered serious problems in obtaining the volume and value data needed for its analysis. This information is necessary so that the Department can properly select Korean manufacturers and exporters for its investigation. As outlined in the "Case History" section of this notice, the Department made repeated attempts to solicit this information, stating that if we did not receive a response to our requests, we might have to make our determination on the basis of best information available. In spite of the Department's repeated attempts, we did not receive a response from the only known manufacturer and exporter. Consequently, we based our preliminary determination in this investigation on best information available. As best information available, we selected the highest margin listed in the notice of initiation for this investigation, which was based on the petition. A description of how petitioner calculated the margins contained in its petition is included in our notice of initiation (57 FR 26645, June 15, 1992).

*Critical Circumstances*

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Korea. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 19 CFR 353.16(a)(1)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since we received no responses from Asia Bend to our questionnaire, we are assuming, as best information available, that its sales to the United States are exporters sales price transactions. Therefore, since the average margins contained in the petition for pipe fittings are above 15 percent, we determine in accordance with section 733(e)(A)(1)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for pipe fittings from Korea.

Because the Department did not receive a response to its questionnaire, we have relied upon best information available for determining whether there have been massive imports of pipe fittings from Korea. Prior to our preliminary determination, we received no company-specific export statistics from Asia Bend. Therefore, absent any company-specific export statistics, we examined the Commerce Department's import statistics as one possible way to measure import levels of pipe fittings from Korea. The pipe fittings subject to this investigation are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). However, as stated in our notice of initiation, threaded, grooved, and bolted fittings are excluded from this investigation. Because we cannot determine what percentage of the volume of imports under this HTSUS subcategory are made up of non-subject merchandise, we cannot rely on the Commerce Department's import statistics as best information available, as a way to measure import levels of the pipe fittings from Korea. Assuming that additional data become available by the time of our final determination, we will reexamine our analysis.

Since respondent has refused to provide the Department with the requested shipment data, we have assumed, as best information available, that imports were massive over a relatively short period of time. Therefore, we preliminarily find that there is a reasonable basis to believe or suspect that imports of pipe fittings from Korea have been massive over a relatively short period of time.

Based on our analysis, we preliminarily find that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of pipe fittings from Korea.

*Suspension of Liquidation*

In accordance with section 733(e)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pipe fittings from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to 21.2 percent on all entries of pipe fittings from Korea. This suspension of liquidation will remain in effect until further notice.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 2, 1992, and for rebuttal briefs no later than November 9, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 11, 1992, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 14, 1992.

**Rolf Th. Lundberg, Jr.,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 92-25551 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DS-M

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**[C-427-805, C-351-812, C-412-811, C-428-812]**

## Alignment of Final Countervailing Duty and Antidumping Duty Determinations of Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Carole Showers, Kristal Eldredge, or Kelly Parkhill, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3217, 482-0631, and 482-4126, respectively.

**ALIGNMENT:** On September 17, 1992, we published preliminary countervailing duty determinations pertaining to certain hot-rolled lead and bismuth carbon steel products from Brazil (57 FR 42980), France (57 FR 42977), Germany (57 FR 42971), and the United Kingdom (57 FR 42974). The final countervailing duty determinations in these cases were originally due not later than November 24, 1992.

On September 29, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)(1)), petitioners requested an extension of the due date for the final countervailing duty determinations to correspond to the date of the final antidumping duty determinations with respect to the same product and country. Accordingly, we are aligning the final determinations in the countervailing duty investigations with the final determinations in the antidumping duty investigations of certain hot-rolled lead and bismuth carbon steel products. Therefore, the final countervailing duty determinations involving France, Germany, and the United Kingdom are now due December 7, 1992. The Brazilian final countervailing duty determination is now due not later than January 25, 1993.

**PUBLIC COMMENT:** The schedule for the briefs, rebuttal briefs, and public hearings will remain as set forth in each of the preliminary determinations.

The U.S. International Trade Commission is being advised of this alignment, in accordance with section 705(d) of the Act. Furthermore, this notice is published pursuant to section 705(d) of the Act.

Dated: October 16, 1992.

**Rolf Th. Lundberg, Jr.,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 92-25552 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

## North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (NPFMC) has scheduled the following committee and workgroup meetings. Dates, locations and contact persons are listed below:

*Salmon Bycatch Workshop* (SBW): The SBW will begin on November 4, 1992, at 1 p.m., in the Denali Room at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK. The purpose of the workshop is to review existing salmon bycatch data for the groundfish fisheries, the current analysis of bycatch management proposals, and the difficulties of implementing a Vessel Incentive Program for salmon prohibited species catch and a time/area closure bycatch regime. Industry participants are encouraged to attend. For more information contact Brent Paine of the NPFM on (907) 271-2809.

*Bycatch Cap Committee* (BCC): The BCC will meet on November 5 through November 6, beginning at 8:30 a.m., at the Denali Room (as stated above). The agenda for the meeting will include a review of the bycatch information the Committee requested at its previous meeting and further development on Committee recommendations for short- and long-term considerations to the halibut bycatch management regime. For more information contact Brent Paine of the NPFMC on (907) 271-2809.

*Comprehensive Rationalization Planning Committee* (CRPC): The CRPC will meet on November 12 through November 13, beginning at 1 p.m., at the Red Lion Inn, Sea-Tac Airport, Seattle, WA. The Committee will meet to develop alternatives for a comprehensive rationalization program for all NPFMC fisheries. For more information contact Clarence Pautzke, of the NPFMC, on (907) 271-2809.

*Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams*: The BSAI and GOA groundfish plan teams will meet on November 16-20, 1992, at the Alaska Fisheries Science Center, Building 4, room 2079, 7600 Sand Point Way NE., Seattle, WA. The meeting will begin at 8:30 a.m. on November 16. The Teams will review the results of recent fishery surveys, prepare final Stock Assessment and Fishery Evaluation documents, develop recommendations for 1993 groundfish apportionments for groundfish species under Council jurisdiction, and discuss research priorities for 1993. For more information contact, Brent Paine, of the NPFMC, on (907) 271-2809.

Dated: October 15, 1992.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 92-25479 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 16, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** October 16, 1992

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 16, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreemer ts. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on October 16, 1992, you are directed to amend further the directive dated January 7, 1992 to increase the limit for Categories 340/640 to 2,443,317 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and Bangladesh.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–25545 Filed 10–20–92; 8:45 am]

BILLING CODE 3510–DR–F

### Announcement of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Colombia

October 15, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of April 3, 1992, between the Governments of the United States and the Republic of Colombia establishes limits for the 1993 agreement year.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

[1] The limit has not been adjusted to account for any imports exported after January 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 15, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Textile Agreement of April 3, 1992 between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following restraint limits:

| Category | Twelve-month restraint limit |
|---|---|
| 314 | 9,540,000 square meters. |
| 315 | 16,430,000 square meters. |

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreemen, between the Governments of the United States and the Republic of Colombia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-25546 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DR-F

## Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

October 15, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing import restraint limits and guaranteed access levels for the new agreement period.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of March 20, 1992 between the Governments of the United States and Costa Rica establishes import limits and guaranteed access levels for the period beginning on January 1, 1993 and extending through December 31, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101 published on November 27, 1991). Information regarding the 1993 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 21047, published on May 22, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 15, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Textile Agreement of March 20, 1992, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following restraint limits:

| Category | Twelve-month limit |
|---|---|
| 340/640 | 725,924 dozen. |
| 342/642 | 267,979 dozen. |
| 347/348 | 1,223,341 dozen. |
| 443 | 202,000 numbers. |

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Costa Rica.

Additionally, pursuant to the Bilateral Textile Agreement of March 20, 1992; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1993, guaranteed access levels have been established for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993:

| Category | Guaranteed access level |
|---|---|
| 340/640 | 650,000 dozen. |
| 342/642 | 250,000 dozen. |
| 347/348 | 1,500,000 dozen. |
| 443 | 200,000 numbers. |

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-25547 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-DR-F

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 15, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Product Agreement, effected by exchange of notes dated December 30, 1991 and December 31, 1991, between the Governments of the United States and the Republic of Poland establishes limits for the 1993 agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 15, 1992.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Product Agreement, effected by exchange of notes dated December 30, 1991 and December 31, 1991, between the Governments of the United States and the Republic of Poland; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 335 | 137,800 dozen. |
| 338/339 | 1,484,000 dozen. |
| 410 | 2,525,000 square meters. |
| 433 | 16,665 dozen. |
| 434 | 11,110 dozen. |
| 435 | 12,120 dozen. |
| 443 | 212,100 numbers. |
| 611 | 4,241,590 square meters. |
| 645/646 | 217,300 dozen. |

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Republic of Poland.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–25548 Filed 10–20–92; 8:45 am]

BILLING CODE 3510-DR-F

## New Textile Export Visa Invoice and Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan; Correction

October 15, 1992.

In the notice published in the **Federal Register** on August 19, 1992 (57 FR 37527), make the following changes under the heading "Supplementary Information":

1. Second column, 2nd paragraph, beginning on line 7, delete the phrase "the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be provided on the textile visa document"; insert the phrase "the complete name and address of a manufacturer in Taiwan actually involved in the manufacturing process of the textile product shall be included on the visa document.

2. Third column, beginning on line 1, delete the phrase "the full name of the company which performs the substantial part of the manufacturing of the product"; insert the phrase "the full name of the manufacturer in Taiwan actually involved in the manufacturing process of the textile product."

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

BILLING CODE 3510-DR-F

[FR Doc. 92–25495 Filed 10–20–92; 8:45 am]

## COPYRIGHT ROYALTY TRIBUNAL

**[Docket Nos. 91–1–89SCD, 91–5–90SCD, 92–2–91SCD]**

## Commencement of the Consolidated 1989–91 Satellite Carrier Royalty Distribution Proceeding

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Notice commencing consolidated 1989–91 satellite carrier royalty distribution.

**SUMMARY:** The Copyright Royalty Tribunal announces that Phase I controversies exist concerning the distribution of the royalties paid by satellite carriers in the 1989–91 time period.

**EFFECTIVE DATES:** The 1989–91 satellite carrier controversies are declared, effective October 16, 1992. A prehearing conference is scheduled for October 26, 1992.

**FOR FURTHER INFORMATION CONTACT:** Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009.

**SUPPLEMENTARY INFORMATION:** By Order of September 17, 1992, the Tribunal granted the request of the Joint Network Parties to defer the declaration of a controversy and the setting of a procedural schedule until October 15, 1992. The Tribunal granted the parties' request for deferral in an attempt to facilitate their settlement negotiations. The parties were notified that if they did not obtain a global settlement by October 15, the Tribunal would declare a controversy effective October 16, 1992 and set the procedural schedule immediately thereafter. Settlement status reports were due on October 15, 1992.

The Tribunal has been informed by the Certain Copyright Owners that they

have formalized an agreement as to the distribution of 1989–91 Phase I satellite royalty shares among themselves. They further informed the Tribunal that no settlements have been reached with the U.S. commercial networks or the Public Broadcasting Service regarding their shares of the royalties. The Certain Copyright Owners requested that the Tribunal declare that two Phase I controversies exist: (a) A controversy involving the allocation of the royalties paid for the carriage of network stations, specifically between works which are owned by the U.S. commercial networks and those which are owned by the Certain Copyright Owners; (b) a controversy involving the allocation of royalties paid for carriage of the public television stations retransmitted by satellite carriers, specifically between works which are properly claimed by Public Broadcasting Service and those which are properly claimed by the Certain Copyright Owners. The Certain Copyright Owners also requested that the Tribunal designate November 20, 1992 as the due date for filing Phase I direct cases and December 1, 1992, as the date for commencement of the Phase I hearing.

PBS reported to the Tribunal that it had been unable to reach a settlement with the other Phase I parties. It requested that the Tribunal require the submission of direct cases no earlier than December 11, 1992. PBS had no comments regarding the date for commencement of the Phase I hearing.

The Joint Network Parties also reported to the Tribunal that they were unsuccessful in reaching a settlement. With regard to procedural dates, they merely requested that the Tribunal order the submission of direct cases no earlier than December 4, 1992. Accordingly, the Tribunal declares, effective October 16, 1992, that controversies exist in Phase I of the 1989–91 satellite carriers distribution proceeding.

The Tribunal notes that the parties were unable to agree on a procedural schedule. Therefore, in an attempt to expedite the proceeding, the Tribunal will hold a prehearing conference on October 26, 1992 at 10 a.m. Parties should be prepared to discuss procedural dates and any other relevant preliminary matters.

Dated: October 16, 1992.

**Cindy Daub,**

*Chairman.*

[FR Doc. 92–25565 Filed 10–20–92; 8:45 am]

BILLING CODE 1410–09–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of the Meetings:* 5 & 6 November 1992.

*Time:* 0800–1600 daily.

*Place:* Headquarters, U.S. Army Space Command, Colorado Springs, CO.

*Agenda:* The Army Science Board's (ASB) ad hoc study panel on Space Systems and Future Army Operations will meet for discussions focussed on current operational concept and the Army Long Range Plan for Space. Additionally, Army and DoD organizations conducting research and development of space related capabilities will give presentations on their activities. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 92–25536 Filed 10–20–92; 8:45 am]

BILLING CODE 3710–08–M

### Department of the Navy

### CNO Executive Panel; Meeting

Notice was published Thursday October 8, 1992, at 57 FR 46377, that the Chief of Naval Operations Executive Panel will meet on October 28-29, 1992, from 9:00 am to 5:00 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on October 28, 1992, only. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

October 8, 1992.

**Geoffrey P. Lyon**

*Lieutenant Colonel, United States Marine Corps, Federal Register Liaison Officer.*

[FR Doc. 92-25447 Filed 10-20-92; 8:45 am]

BILLING CODE 3810-AE-F

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0030]

### OMB Clearance Request for Sale of Used Items to the Government

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0030).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Sale of Used Items to the Government.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Government does not normally purchase used items. Therefore, when a contractor proposes the substitution of a used item for a new item, data must be furnished to the contracting officer so the proposal can be properly evaluated. A description of the item, quantity, date of acquisition, source, and monetary advantages to the Government are the basic data necessary to evaluate the proposal. Upon completion of the contracting officer's evaluation and determination, the data is placed in the contract file and becomes a matter of record.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *790*; responses per respondent, *4*; total annual responses, *3,160*; preparation hours per response, *.25*; and total response burden hours, *790*.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0030, Sale of Used Items to the Government, in all correspondence.

Dated: October 6, 1992.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 92-25448 Filed 10-20-92; 8:45 am]

BILLING CODE 6320-34-M

## DEPARTMENT OF ENERGY

### Savannah River Field Office (SR); Financial Assistance Award Intent To Award a Noncompetitive Grant

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of noncompetitive renewal of grant.

**SUMMARY:** The DOE announces that it plans to award a renewal grant to the South Carolina Department of Health and Environmental Control (SCDHEC), 2600 Bull Street, Columbia, SC 29201 for oversight and implementation of the Federal Facility Agreement (FFA). The grant will provide funding to SCDHEC prior to finalization of the FFA; term of the renewal is one year with a funding level of $1,496,845 for the period. Pursuant to § 600.7 (B)(2)(i)(A and C) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that a noncompetitive award is appropriate since performance of the activity is necessary to the satisfactory continuation of the activity and SCDHEC is a unit of government and the activity to be supported is related to performance of their function within the subject jurisdiction.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth T. Martin, U.S. Department of Energy, Savannah River Field Office, Contracts Division, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725-2191.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), states are allowed to recover funds related to the costs of removal or remedial action taken to cleanup hazardous substances. The proposed renewal grant will enable the State of South Carolina to continue maintaining a program to oversee the environmental restoration program at the Savannah River Site (SRS) conducted under requirements of CERCLA. Activities will include: Review and comment on relevant primary and secondary documents generated under the FFA for the SRS; participation in associated public meetings and/or hearings and other community relations activities pursuant to CERCLA requirements; and certification of DOE sampling and analytical results at CERCLA sites.

SCDHEC is the authorized and qualified State regulatory agency to perform the functions covered under this grant. DOE has determined that this award to SCDHEC on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina on: October 14, 1992.

**Robert E. Lynch,**

*Head of the Contracting Activity Designee, DOE Savannah River Field Office, Head of Contracting Activity.*

[FR Doc. 92-25532 Filed 10-20-92; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Regulatory Commission.
2. FERC-16A.
3. 1902-0105.
4. Monitoring (Omnibus) Report (Standby Authority).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 1 respondent.
10. 1 response.
11. 1.00 hour per response.
12. 1.00 hour.
13. Stand-by authority to collect information needed to ensure that the Federal Energy Regulatory Commission has timely information available with respect to the natural gas supply outlook for the upcoming winter period and to identify potential areas where shortages may exist or develop.

**Statutory Authority.** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. section 764(a), 764(b), 772(b), and 790(a).

Issued in Washington, DC, October 13, 1992.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 92-25533 Filed 10-20-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. RP-92-133-001 (Phase II)]

### Gas Research Institute; Filing of Joint Supplemental Comments and Cofunding Agreement

October 14, 1992.

Take notice that on October 9, 1992, the Gas Research Institute (GRI) and the Process Gas Consumers Group, the American Iron and Steel Institute, and the Georgia Industrial Group (collectively, the Industrial Groups) jointly filed supplemental comments. The supplemental comments describe and append an agreement between GRI and the Industrial Groups that would resolve virtually all of the cofunding and alternative funding mechanism issues in this proceeding. The cofunding agreement also would terminate several pending appellate cases involving cofunding and alternative funding issues raised in past annual proceedings on GRI's applications for approval of its research and develop (R&D) program. Under the agreement, GRI also would request no more that $201.8 million in its 1994 obligations budget request. GRI and the Industrial Groups ask the Commission to decide GRI's 1993 R&D program and 1993–1997 R&D plan application consistently with the terms of the cofunding agreement. GRI and the Industrial Groups also filed a motion for leave to file the supplemental comments.

The Commission requests comments on the foregoing and on the effect of section 408(a) of the Energy Policy Act of 1992 on our actions with respect to GRI's 1993 program and 1993–1997 research and development plan.

GRI and the Industrial Groups state that they have served copies of the agreement, the supplemental comments, and accompanying motion on all parties to this proceeding. Any party to this proceeding desiring to be heard on the agreement, supplemental comments, and motion, or on the effect of the new legislation, should file comments on or before October 23, 1992 with the Federal Energy Regulatory Commission, Washington, D.C. 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-25475 Filed 10-20-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RS92-19-000]

### KN Energy, Inc.; Prefiling Conference

October 14, 1992

Take notice that on Friday, October 23, 1992, at 9 a.m., a conference will be convened in the above-captioned docket to discuss KN Energy's proposed plan for implementation of Order No. 636. The conference will be held in the first floor conference center of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties may call Arnold H. Meltz at (202) 208–2161 or Thomas E. Gooding at (202) 208–0831.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-25474 Filed 10-20-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP92-459-000 and CP92-460-000]

### Texas Eastern Transmission Corp. and Trunkline Gas Co.; Technical Conference

October 9, 1992.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10 a.m. on October 21, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern relating to Trunkline Gas Company's proposal to abandon by sale, and Texas Eastern Transmission Corporation's corresponding proposal to acquire and operate, Trunkline Gas Company's ownership interest in the "Lebanon Lateral". All interested parties are invited to attend. For additional information, interested parties may call William L. Zoller at (202) 208–1203.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-25473 Filed 10-20-92; 8:45 am]

BILLING CODE 6717-01-M

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## Cases Filed With the Office of Hearings and Appeals During the Week of September 25 through October 2, 1992

During the Week of September 25 through October 2, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 13, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DURING THE WEEK OF SEPTEMBER 25 THROUGH OCTOBER 2, 1992

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Oct. 1, 1992 | Gulf/Frankenmath Oil Company Washington, DC | RR300-204 | Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The July 26, 1989 Decision and Order (Case No. RF300-4172) issued to Frankenmuth Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| Oct. 1, 1992 | Gulf/Hanning Oil Company Washington, DC | RR300-206 | Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The November 7, 1988 Decision and Order (Case No. RF300-4994) issued to Hanning Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS DURING THE WEEK OF SEPTEMBER 25 THROUGH OCTOBER 2, 1992—Continued

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Oct. 1, 1992 | Gulf/Lincoln Land Oil Company Washington, DC | RR300-205 | Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The June 9, 1989 Decision and Order (Case No. RF300-5085) issued to Lincoln Land Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding. |
| Week of September 18 through September 25, 1992 | | | |
| Oct. 1, 1992 | Whitaker Oil Company Washington, DC | LEF-0052 | Implementation of Special Refund Proceeding. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with February 25, 1990 Agreed Judgment entered into with Whitaker Oil Company. |

REFUND APPLICATIONS RECEIVED

[Week of September 25 to October 2, 1992]

| Date Received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 09/28/92 | Aloha Petroleum Ltd. | RF304-13305 |
| 09/28/92 | Wiggins Clark Super 100. | RF342-310 |
| 09/28/92 | La Cienega Arco | RF304-13299 |
| 09/28/92 | Husky Oil Company. | RF304-13300 |
| 09/28/92 | Husky Oil Company. | RF304-13001 |
| 09/28/92 | Del Real Arco Service. | RF304-13302 |
| 09/28/92 | Herman C. Miller | RF304-13303 |
| 09/28/92 | Derugen's Arco | RF304-13304 |
| 10/02/92 | Commonwealth Propane, Inc. | RF304-13307 |
| 10/02/92 | Francis E. Behrens, Jr. | RF304-13308 |
| 09/25/92-10/02/92. | Gulf Oil Refund Applications Received. | RF300-20559 thru RF300-20585 |
| 09/25/92-10/02/92. | Texaco Oil Refund Applications Received. | RF321-19265 thru RF321-12281 |
| 09/25/92-10/02/92. | Crude Oil Refund Applications Received. | RF272-93873 thru RF272-93886 |

[FR Doc. 92-25534 Filed 10-20-92; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Issuance of Proposed Decisions and Orders; Week of September 28 Through October 2, 1992

During the week of September 28 through October 2, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, which occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m., and 5 p.m, except federal holidays.

Dated: October 13, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*Gallup-Silkworth Petroleum Products, Ann Arbor, MI., Reporting Requirements [LEE-0044]*

Gallup-Silkworth Petroleum Products filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on September 30, 1992, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 92-25535 Filed 10-20-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4524-4]

### Proposed Administrative Penalty Assessments and Opportunity To Comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative penalty assessments and opportunity to comment.

**SUMMARY:** EPA is providing notice of proposed administrative penalty assessments for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessments.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures. The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Guidance. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the matter of the City of Tolleson; EPA Docket No. CWA–IX–FY92–41, filed on October 2, 1992 with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–2331, proposed penalty, $5,000, for failure to comply with the reporting requirements of NPDES Permit AZ0020338.

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22, as amended on an interim final basis at 52 FR 30671 (August 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules, as amended. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the matter of City of Somerton, EPA Docket No. CWA IV–FY92–24, filed on October 1, 1992 with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–2331, proposed penalty, $125,000, for failure to comply with the effluent limitations contained in NPDES Permit AZ0023051 and for failure to submit complete Discharge Monitoring Reports as required by the NPDES Permit.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of EPA's Guidance or EPA's Consolidated Rules, review the complaint or other documents filed in these proceedings, comment upon a proposed assessment, or otherwise participate in these proceedings should contact the Regional Hearing Clerk identified above. The administrative record for these proceedings are located in the EPA Regional Office identified above, and the files will be open for public inspection during normal business hours. All information submitted by the respondents is available as part of the administrative records, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 13, 1992.

**Catherine Kuhlman,**

*Acting Director, Water Management Division.*

[FR Doc. 92–25403 Filed 10–20–92; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL RESERVE SYSTEM

### Anchor Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 13, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Anchor Financial Corporation*, Myrtle Beach, South Carolina; to acquire 6.77 percent of the voting shares of First Atlantic Bank, Little River, South Carolina.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. GAB Bancorp*, Jasper, Indiana; to acquire 100 percent of the voting shares of Winslow Bancorporation, Inc., Cincinnati, Ohio, and thereby indirectly acquire South Western Indiana National, Winslow, Indiana.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Milk River Investments, Inc.*, Hinsdale, Montana; to acquire 7.3 percent of the voting shares of The First National Bank of Glasgow, Glasgow, Montana.

**D. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. CNB Financial Corporation*, Kansas City, Kansas; to acquire 14.1 percent of the voting shares of Security State Bank of Fort Scott, Fort Scott, Kansas.

*2. Cornhusker Growth Corporation*, Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Cornhusker Bank, Lincoln, Nebraska.

*3. The Winter Trust of 12/3/74*, Ottawa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of El Paso Bancshares, Inc., Monument, Colorado, and thereby indirectly acquire Peoples National Bank, Monument, Colorado; Western Bank, Taos, New Mexico; Mid-Continent Corporation ("Mid-Continent"), Monument, Colorado, and Mid-Continent's subsidiary bank, Commercial Bank of Leadville, Leadville, Colorado.

Board of Governors of the Federal Reserve System, October 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-25493 Filed 10-20-92; 8:45 am]

BILLING CODE 6210-01-F

### Edward A. Cook, III, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than November 10, 1992.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Edward A. Cook, III*, Gothenburg, Nebraska; to acquire 31.48 percent; Betty D. Cook, Gothenburg, Nebraska, to acquire 31.48 percent; John C. Cook, Lexington, Nebraska, to acquire 14.81 percent; and Catherine C. Jensen, Topeka, Kansas, to acquire 14.81 percent of the voting shares of First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, and thereby indirectly acquire First State Bank, Gothenburg, Nebraska.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Randy L. Ewing*, Quitman, Louisiana, to acquire an additional 28.39 percent for a total of 33.70 percent; John C. Sealy, Ruston, Louisiana, to acquire an additional 28.39 percent for a total of 30.70 percent; David G. Darland, Ruston, Louisiana, to acquire an additional 4.0 percent for a total of 4.49 percent; and Joe C. Mitcham, Jr., Ruston, Louisiana, to acquire an additional 3.20 percent of American National Bancshares, Inc., Ruston, Louisiana, for a total of 3.29 percent, and thereby indirectly acquire American Bank of Ruston, Ruston, Louisiana.

Board of Governors of the Federal Reserve System, October 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-25492 Filed 10-20-92; 8:45 am]

BILLING CODE 6210-01-F

## Farmers & Merchants Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Farmers & Merchants Bancorp, Inc.*, Archbold, Ohio; to engage *de novo* through its subsidiary, Independent Life Insurance Company, Archbold, Ohio, in selling credit life and credit disability/health insurance requested by loan customers of The Farmers & Merchants State Bank, a wholly-owned subsidiary of Applicant. Company proposes to engage in permissible underwriting activity in its operation as principal in the underwriting of said insurance as a reinsurer pursuant to § 225.25(b)(8)(B) of the Board's Regulation Y.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Marquette Bancshares, Inc.*, Minneapolis, Minnesota; to engage *de novo* in providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation and operation personnel), data bases, and access to such services, facilities and data bases to financial institutions pursuant to § 225.25(b)(7); and to engage in the making, acquiring, or servicing of loans or other extensions of credit for its own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-25494 Filed 10-20-92; 8:45 am]

BILLING CODE 6210-01-F

## Society Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Society Corporation*, Cleveland, Ohio; to acquire First Federal Savings and Loan Association of Fort Myers, Fort Myers, Florida, and thereby engage

in owning, controlling, and operating a savings association if the savings association engages only in deposit taking, lending, and other activities that are permissible for bank holding companies pursuant to § 225.25(b)(9); including performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3); and acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y. In connection with this application, Applicant also proposes to acquire the wholly-owned subsidiary of First Federal, First Appraisal Services Corporation, and thereby engage in performing appraisals of real estate pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 15, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-25491 Filed 10-20-92; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 92P-0330]**

### Eggnog Deviating from Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Sani-Dairy to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Margaret E. Cole, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4745.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Sani-Dairy, Division of Penn Traffic Co., P.O. Box 160, Johnstown, PA 15907-0160.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The milkfat content of the product is reduced from 6 percent to 1 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 118.5 milliliters (4 fluid ounces) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) aspartame is used in place of the optional nutritive carbohydrate sweeteners specified in 21 CFR 131.170(d). The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The name of the food is followed by the statement "sweetened with aspartame." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "55% fewer calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 118,250 liters (125,000 quarts) of the test product. The product will be manufactured at Sani-Dairy, Division of Penn Traffic Co., 400 Franklin St., Johnstown, PA 15901, and distributed in Maryland, New York, Ohio, Pennsylvania, and West Virginia.

While the labeling of the test product complies with FDA's current regulations, the agency proposed in the **Federal Register** of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light" or "lite," "reduced calories," "reduced fat," "lowfat," "nonfat," and "fat free," as well as criteria for the use of these terms on food labels. In addition, the agency published two proposals in the **Federal Register** that would: (1) Amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). A notice will be published shortly that will state the date after which labels must comply with the final regulations that the agency issues based on these proposals. The test product may need to be reformulated or relabeled to comply with any changes in the food labeling regulations that the agency ultimately adopts. All products, including the test product, introduced into interstate commerce after the effective date of these regulations will have to comply.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than (*insert date 90 days after date of publication in the* **Federal Register**).

Dated: October 7, 1992.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-25503 Filed 10-20-92; 8:45 am]

BILLING CODE 4160-01-F

### Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETINGS:** The following advisory committee meetings are announced:

### Biological Response Modifiers Advisory Committee

*Date, time, and place.* November 4, 1992, 4 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* This meeting will be held by a telephone conference call. A speaker telephone will be provided in the Conference rm. to allow public participation in the

meeting. Open committee discussion, 4 p.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB–5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8226.

*General function of the committee.* The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 28, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss the intramural scientific programs of the Laboratory of Biophysics, Laboratory of Molecular Pharmacology, and the Laboratory of Chemical Biology of the Division of Biochemistry and Biophysics, Center for Biologics Evaluation and Research.

*Closed committee deliberations.* The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

### Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee

*Date, time, and place.* November 16, 1992, 10 a.m., First Floor Conference rm., 1390 Piccard Dr., Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 10 a.m. to 1 p.m., unless public participation does not last that long; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Cornelia Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1243.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 2, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a premarket approval application for an enzyme immunoassay intended for in vitro diagnostic use in the quantitative analysis of cyclosporine human whole blood as an aid in the management of cyclosporine therapy in kidney, heart, and liver transplant patients. The proposed draft guidance document of the Toxicology Branch of the Division of Clinical Laboratory Devices for cyclosporine assays will also be discussed.

*Closed committee deliberations.* The committee may discuss trade secret and/or confidential commercial information regarding the cyclosporine device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C.552b(c)(4)).

### Dermatologic Drugs Advisory Committee

*Date, time, and place.* November 19 and 20, 1992, 9 a.m., Holiday Inn, Silver Spring Plaza (Plaza Ballroom), 8777 Georgia Ave., Silver Spring, MD.

*Type of meeting and contact person.* Open public hearing, November 19, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; closed committee deliberations, November 20, 1992, 9 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 10, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On November 19, 1992, the committee will discuss new drug applications (NDA's) 50–695 and 50–696, Sandimmune®, (cyclosporine soft gelatin capsule and oral solution, Sandoz Pharmaceuticals) for treatment of recalcitrant psoriasis.

*Closed committee deliberations.* The committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's and investigational new drugs. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

### Medical Imaging Drugs Advisory Committee

*Date, time, and place.* November 20, 1992, 8 a.m., Conference rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; closed committee deliberations, 9 a.m. to 4 p.m.; Leander Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 9, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Closed committee deliberations.* The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new

drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**Anesthetic and Life Support Drugs Advisory Committee**

*Date, time, and place.* November 23 and 24, 1992, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, November 23, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 5:30 p.m.; closed committee deliberations, November 24, 1992, 8:30 a.m. to 2 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 16, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On November 23, 1992, the committee will discuss: (1) Recent adverse experiences associated with administration of neuromuscular blocking agents: Succinylcholine chloride injection new drug applications (NDA's) 8–453 (Burroughs-Wellcome), 8–845 (Abbott), 8–847 (Bristol Myers Squibb), and vecuronium bromide injection, NDA 18–776; (2) NDA 19–050 for new indication, sufentanil citrate (Sufenta®, Janssen Pharmaceutical Research Foundation); and (3) NDA 19–627 for new indication, propofol (Diprivan®, ICI Pharmaceuticals).

*Closed committee deliberations.* The committee will review trade secret and/or confidential commercial information relevant to NDA 19–627 propofol (Diprivan®, ICI Pharmaceuticals) and NDA 19–050 sufentanil citrate (Sufenta®, Janssen Pharmaceutical Research Foundation). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly

unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 14, 1992.

**David A. Kessler,**

*Commissioner of Food and Drugs.*

[FR Doc. 92-25449 Filed 10-20-92; 8:45 a.m.]

BILLING CODE 4160-01-F

## Food and Drug Administration

### Advisory Committee Meeting; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to a notice of meeting of the Anti-Infective Drugs Advisory Committee Subcommittee on Ophthalmic Drugs that is scheduled for October 26 and 27, 1992. This meeting was announced in the **Federal Register** of September 21, 1992 (57 FR 43461). The amendment is being made to reflect a change in the location of the 2-day meeting. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Adele S. Seifried, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 21, 1992 (57 FR 43461), FDA announced that a meeting of the Anti-Infective Drugs Advisory Committee Subcommittee on Ophthalmic Drugs would be held on October 26 and 27, 1992, at the Parklawn Bldg., Conference rms. D & E, Rockville, MD. On page 43461, in the 2d column, the location for this meeting is amended to read as follows:

*Date, time, and place.* October 26 and 27, 1992, 8:30 a.m., Potomac Inn, Ballrooms A, B, and C, I-270 and Shady Grove Rd., Three Research Ct., Rockville, MD.

Dated: October 14, 1992.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 92-25502 Filed 10-20-92; 8:45 a.m.]

BILLING CODE 4160-01-F

## Health Care Financing Administration

**[BPO-93-FN]**

**RIN 0938-AF04**

### Medicare Program; Revised Procedures for Paying Claims From Providers of Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces the implementation of a uniform payment policy and procedures for paying providers of services under Medicare Parts A and B. The revised payment policy allows providers to elect to receive claims payments through either (1) electronic funds transfer; or (2) hard copy checks sent directly by first class mail. The procedures allow intermediaries and carriers to pay providers through direct deposits into providers' bank accounts if the providers (1) are already electronic media claims billers; (2) accept an electronic remittance notice in lieu of a paper remittance notice; and (3) request electronic funds transfer in writing. The procedures are issued in response to requests from both contractors and HCFA regional offices to implement a policy for payment methods that treats all payees uniformly.

**EFFECTIVE DATE:** This notice is effective on November 20, 1992.

**FOR FURTHER INFORMATION CONTACT:** Louis Palmieri, (410) 966-7528.

**SUPPLEMENTARY INFORMATION:**

I. Background

Section 1815(a) of the Social Security Act (the Act) provides the authority for the Secretary of Health and Human Services to pay providers of Medicare services at such time or times as the Secretary determines appropriate (but no less frequently than monthly). Under Medicare, HCFA, acting for the Secretary, contracts with fiscal agents (intermediaries and carriers) to pay claims submitted by providers who furnish services to Medicare beneficiaries. For purposes of this document, the term "provider" includes both a "provider" and a "supplier" as defined in the Medicare regulations under 42 CFR 400.202. Section 400.202 defines "provider" as a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice, that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services. Section 400.202 defines "supplier" as a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare.

Currently, manual instructions for intermediaries and carriers provide details regarding the preparation and issuance of hard copy checks. (See section 1412 of the Medicare Intermediary Manual, Part I, Fiscal Administration, and section 4412 of the Medicare Carriers Manual, Part I, Fiscal Administration.) There are no existing regulations that prescribe or describe the procedures for paying Medicare providers for their services. However, section 3023 of the Medicare Carriers Manual, Part III, provides instructions for establishing a system to process electronic media claims.

Under the existing manual instructions, hard copy checks are drawn on the commercial bank servicing the intermediary's or carrier's Medicare account and mailed to providers of services with a remittance notice that summarizes payments that are approved by HCFA. The intermediary or carrier must send the check by first class mail. HCFA underwrites the costs of postage. On the average, the provider's bank account is credited 3 days from the date that the hard copy check is mailed by the intermediary or carrier.

HCFA has received requests from providers, intermediaries, carriers, and HCFA regional offices that we consider the implementation of a payment method other than hard copy checks (for example, direct deposits) to accelerate the availability of funds that are due providers. They believe that use of the direct deposit method will: provide providers with cash earlier to cover their current operating expenses; in some instances, eliminate significant cash flow problems that some small providers have; and reduce Medicare administrative costs.

We have considered these requests and as a result are implementing changes in the payment procedures. We announced proposed changes in our payment procedures in a notice with comment period published in the **Federal Register** on July 11, 1991 (56 FR 31666). We received 15 timely comments in response to this notice with comment period. A summary of these comments and the Department's responses appear in section III of this notice.

**II. Discussion of Procedures**

In determining whether to move to implementation of payment methods other than hard copy checks, we considered: the effect implementing a direct deposit system would have on the timeliness of claims processing; the direct deposit methods that are available and whether their use would be cost effective for the Medicare program; and other policy and procedures that would need to be developed to ensure that there is a uniform policy for paying providers.

In order to determine whether intermediaries and carriers process claims for payment for services on a timely basis, sections 1816(c) and 1842(c) of the Act require that 95 percent of "clean claims" must be paid within 24 days (under Medicare Part B, 17 days for participating physicians). In addition, we impose an administrative standard that requires that claims must be held for 14 days before payment. The payment timeliness standards, which we implement through the Contractor Performance Evaluation Program, have been changed periodically by legislation, most recently by the Omnibus Budget Reconciliation Acts of 1986 (Pub. L. 99–509) and 1987 (Pub. L. 100–203), and are subject to change each fiscal year. We announce the Contractor Performance Evaluation Program data and standards annually in the **Federal Register** (see, for example, 57 FR 43230, September 18, 1992). Because of the frequency of change, we believe that it is not appropriate to consider incorporating the specific payment time limits into any revised payment procedures. We require the individual Medicare intermediaries and carriers to ensure that the claims payment date is within the claims processing timeliness standards in effect when the payment is made.

In the banking community, there are two basic types of direct deposit methods: (1) A relatively low volume, nonrecurring, and high cost method referred to as "wire transfer"; and (2) a relatively high volume, recurring, and low cost method referred to as "electronic funds transfer." We have found that the customary bank charge for wire transfer ranges between $5.00 and $10.00 per transfer (and, in some cases, may be as high as $24.00). The equivalent charge for an electronic transfer payment ranges from $.03 to $.10 each.

In response to the concerns of providers, we are instructing intermediaries and carriers to use electronic funds transfer to make direct deposits of funds to those providers who satisfy all of the requirements as described below. Since wire transfers are much more costly than electronic funds transfers, we are directing intermediaries and carriers to use the electronic funds transfer method for all direct deposits (that is, we are not authorizing direct deposit via wire transfers).

We are withdrawing the proposed 3-day delay provision for direct deposits that was included in our prior notice. We are also withdrawing our proposal to make wire transfers available to providers (see section III of this final notice).

A provider of services must satisfy three requirements in order to qualify for direct deposit by electronic funds transfer. The provider must (1) be an electronic media claims biller (that is, at least 90 percent of the provider's Medicare claims must be billed electronically); (2) accept electronic remittance notices in lieu of a paper remittance notice; and (3) request the transfer in writing.

Direct deposit is intended as an incentive to encourage suppliers to become electronic media claims billers. This is consistent with HCFA's Report to Congress on Electronic Media Claims (Report No. RC–90–028, May 22, 1990). A copy of this Report may be obtained by writing to HCFA, Bureau of Program Operations, Office of Program Operations Procedures, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Although the Report does not address Medicare Part A providers of services, we are extending this incentive to Part A providers who are electronic media claims billers in order to establish a consistent national policy that covers both intermediary and carrier operations regarding direct deposit.

Intermediaries and carriers will make direct deposits to providers' bank accounts through the electronic funds transfer method, using the Automated Clearing House function of the Federal Reserve Banking System, if the provider requests direct deposit and if it meets other specified conditions that are discussed below in this notice.

For any provider that has not requested direct deposit, intermediaries and carriers will continue to make payments to the provider via hard copy check drawn on the commercial bank servicing the intermediary's or carrier's account. Intermediaries and carriers will continue to send the hard copy check, using first class mail of the U.S. Postal Service only, with HCFA incurring the costs of postage. We are prohibiting providers from picking up, requesting next day delivery, or using a courier service for hard copy checks, except for emergency situations. For emergency situations (for example, a total equipment failure that prevents electronic submission of bills), the provider must obtain prior approval for delivery of the hard copy check by other than regular first class mail. The provider may make an emergency request by telephone to the intermediary or carrier. However, the provider must follow up the telephone request with a written request to the intermediary or carrier. We believe that emergency situations will be extremely rare and do not anticipate frequent use of this method.

These procedures are directed primarily at intermediaries and carriers, over which HCFA exercises authority through instructions issued in the Medicare Intermediary Manual and the Medicare Carriers Manual. However, because of the effect on providers and the need for providers to request the use of direct deposit as a payment method, we issued the proposed procedures in the July 11, 1991, notice with comment period cited earlier. We have made some refinements in these procedures on the basis of the comments that we received on the proposed procedures.

**III. Analysis of and Responses to Public Comments**

A majority of the 15 public comments received on the July 11, 1991, notice with comment period supported HCFA's effort to implement a uniform payment policy and procedures for paying providers of services under Medicare Parts A and B. The comments and our responses are presented below.

*Comment:* Several commenters objected to our proposal to delay the settlement date for electronic funds transfers payments for 3 days (that is, 3 working days beyond the date that the hard copy checks would have been issued). Some commenters indicated that adding 3 days to the existing "14-day floor" for payment of clean claims is without legislative support. (The "14-day floor" refers to the administrative standard that we currently impose on

intermediaries and carriers that requires them to hold claims for 14 days before payment can be made, as discussed in section II of this notice.) Others indicated that the additional days would be a disincentive for providers to move toward an electronic remittance environment. One commenter suggested daily electronic funds transfers in lieu of the 3-day hold and requested that electronic funds transfers not be further delayed by weekends, holidays, or restricted bank hours.

*Response:* As a result of these comments, we have decided to remove the proposed requirement to delay payment via electronic funds transfers for 3 days. We believe that the removal of the proposed 3-day hold will not have a significant negative impact on benefit outlays or interest, since providers will be prohibited from picking up checks except in emergency situations. We are instructing intermediaries and carriers not to place any hold on the payment except for the existing 14 day floor; therefore, payment will be initiated no sooner than the 15th day. We believe this policy will enhance the overall efficiency of the Medicare claims processing operation by giving providers and suppliers an incentive to submit electronic media claims, making payments more convenient to providers and suppliers, and decreasing administrative costs to the Medicare program.

*Comment:* One commenter suggested delaying the settlement date for electronic funds transfer payments for 4 days rather than the proposed 3 days. The commenter believed that the 3-day delay would be more beneficial to the provider than to the Federal government.

*Response:* We had proposed the 3-day delay to reflect the average time it takes hard copy checks to be delivered via U.S. mail and collected in the provider's bank account. As indicated in the preceding comment and response summary, we have removed the 3-day delay provision.

*Comment:* Several commenters expressed concern about the requirement that a provider must be an electronic media claims biller and indicated that the requirement would prevent many providers from requesting electronic funds transfers. One commenter suggested requiring a provider either be an electronic media claims biller or file a request to be an electronic media claims biller to qualify for electronic funds transfers.

*Response:* In this final notice, we are clarifying this policy by specifying that we will consider a provider to be an electronic media claims biller if the provider submits bills electronically for at least 90 percent of its total Medicare claims volume for 3 consecutive months. We are instructing intermediaries and carriers to withdraw a provider from the electronic funds transfer method if the provider fails to meet the 90 percent requirement for 2 or more consecutive months, or 3 or more nonconsecutive months during any 12-month period. Intermediaries and carriers will reinstate a provider when the provider has again met the 90 percent requirement for 3 consecutive months. We believe this approach will foster the consistent use of electronic media claims bill submissions and will encourage the maximum number of providers to take advantage of the efficiency and economy associated with the electronic transfer of funds.

*Comment:* One commenter indicated that the proposed policy may penalize providers that do not request electronic funds transfer without consideration of why they have not chosen the option. For example, the commenter indicated that some providers may not be able to send claims electronically because of a HCFA regulation that requires attachments (documentation), such as those for various therapies and end-stage renal disease treatment.

*Response:* We are aware of this problem and we are working with contractor and provider technical advisory groups to develop ways to reduce the number of attachments and amount of documentation required.

*Comment:* One commenter stated that many small providers cannot afford computers and software necessary to become electronic media claims billers.

*Response:* We suggest that small providers who are experiencing the problem of lack of necessary computers or software can elect to use a billing service. In some instances, intermediaries and carriers provide low cost or free software to encourage more providers to become electronic media claims billers. Providers that do not bill electronically will continue to bill manually and be paid manually.

*Comment:* Another commenter indicated that nine regional home health intermediaries are not yet fully capable of accepting electronic claims submissions and using electronic devices. The commenter felt that this would disadvantage many providers who have no choice but to continue paper billing.

*Response:* The situation described by this comment no longer exists. All regional home health intermediaries are now capable of both accepting electronic claims and providing electronic remittance advices.

*Comment:* Two commenters stated that some carriers have not extended electronic media claims to certain classes of suppliers, for example, durable medical equipment suppliers and home medical equipment suppliers. One of the commenters indicated that 95 percent of the home medical equipment suppliers are not eligible to choose electronic funds transfers because of the requirement that they must accept electronic remittance advices in lieu of paper notices.

*Response:* Carriers have required durable medical equipment suppliers to submit claims and documentation together manually rather than electronically because of the extensive documentation required for certain claims for durable medical equipment. In addition, carriers previously have not made available to home medical equipment service suppliers certain services that are available to physicians or other specialty (Medicare Part B) suppliers.

However, under instructions released to all HCFA regional offices by memorandum on November 18, 1991, and later to the Medicare contractors (Transmittal No. 1423, dated April 4, 1992), all carriers are now required to accept the electronic version of certificates of medical necessity as full documentation for all claims submitted via the new Part B National Standard Format specifications; that is, carriers may not require physicians or suppliers who use the National Standard Format to furnish duplicate/additional information on paper. Therefore, we anticipate that electronic transfers should be widely available to durable medical equipment and home medical equipment suppliers.

*Comment:* Several commenters addressed the requirement that a provider who elects the electronic funds transfer method must accept an electronic remittance advice in lieu of the paper notice. They indicated that some providers lack the capability to accept electronic remittance advices and that current electronic formats do not contain sufficient information or do not identify denial reasons as does the paper remittance notice. In addition, these commenters indicated that secondary payers require hard copy proof of payment and that it is difficult to reconcile payment and remittance advice information because they are split transactions. Three commenters suggested that we use a national protocol, such as a tracer number within the electronic remittance format, to allow for automated reconciliation of payments and remittance data.

*Response:* We are offering direct deposit through electronic funds transfer as an incentive for providers to develop the capability to bill electronically and accept electronic remittance advices. Since we announced changes in payment procedures in our July 11, 1991, notice with comment period, we have developed a national standard remittance advice format that accommodates numerous codes to identify denial reasons. Although it is true that some secondary payers require hard copy proof of payment, a growing number of secondary payers accept electronic proof or locally printed proof.

Payment and remittance data will not be difficult to reconcile even if the data travel over separate paths (for example, the payment through the bank and the remittance back via the same medium the claim traveled). Both payment and remittance data will carry identical identification to facilitate computer matching. In addition, a tracer number will be assigned to each remittance advice transmission.

*Comment:* Five commenters objected to the prohibition on pickup, next-day delivery, or use of a courier service for hard copy checks, except in emergency situations. One commenter indicated that HCFA lacks statutory or regulatory authority to impose such a prohibition. Another commenter believed that providers would lose 2 days of interest on their money. One commenter suggested that providers that in the past have been allowed to pick up payments directly or by courier should be allowed to continue to do so or be given the option to request wire transfer. The commenter indicated that this option should be available whether or not the providers meet the direct deposit conditions of being an electronic media claims biller and accepting electronic remittance notices. One commenter requested that HCFA define standards for determining "emergencies", so that intermediaries and carriers can evaluate whether an emergency exists in an objective manner in order to avoid needless and arbitrary action.

*Response:* Allowing providers to continue to pick up hard copy checks, arrange next day delivery, or use a courier service for hard copy checks, other than for emergencies, would remove an important incentive necessary to implement the uniform payment policy. Part of the savings we anticipate from our revised policy is the elimination of costs associated with non-routine handling of hard copy checks. Similarly, in the interests of program standardization and cost effective service, we are not authorizing wire transfers to providers.

As indicated in section II of this notice, we anticipate that emergency situations will be rare, such as when a provider is unable to submit bills electronically due to total equipment failure. Therefore, we are not making any changes in policy as a result of these comments.

*Comment:* One commenter objected that the new policy would shift the incremental costs of payments to providers who elect to use electronic funds transfers and wire transfers (direct deposit) rather than direct mail. One commenter suggested that we add a fuller discussion of wire transfers versus Automated Clearing House methods and that we consider requiring that providers share the cost of direct deposit payments.

*Response:* Our policy does not require providers to pay the incremental costs for electronic funds transfers and does not provide for wire transfers. As discussed below, we have withdrawn our proposal to make wire transfers available to providers.

*Comment:* A few commenters indicated that wire transfers can only accommodate limited amounts of information during a transmission (much of which is not machine readable) and will require a separate routing or communication of remittance payment information. One commenter suggested that HCFA should clarify how the intermediary or carrier should handle remittance payment information in the case of wire transfer.

*Response:* We have concluded that this payment method is not appropriate for use in the Medicare program, and therefore, withdraw our proposal to make wire transfers available to providers.

*Comment:* Three commenters suggested that HCFA adopt a flexible format for electronic funds transfer processing that includes both payment and remittance payment information on one transaction, since there are a variety of Automated Clearing House payment formats available. Another suggested that providers have the option to select the payment format.

*Response:* We believe the technical aspects of Automated Clearing House formats are beyond the scope of this notice. However, we will address these issues in manual instructions that we send to the intermediaries and carriers.

*Comment:* One commenter suggested eliminating the use of wire transfers and using only Automated Clearing House methods.

*Response:* We agree. We are withdrawing our proposal to make wire transfers available to providers. Such a payment mechanism, by its nature, is costly and inefficient and would rely on small-volume, non-standard processes.

**IV. Information Collection Requirements.**

This final notice contains information requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to be ¼ hour per provider to complete a request for direct deposit. A notice will be published in the **Federal Register** when approval is obtained.

**V. Regulatory Impact Statement.**

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider providers to be small providers.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This final notice allows intermediaries and carriers to pay certain providers through direct deposit into providers' accounts. Direct deposit will be on a

request basis, and we cannot determine how many providers will request this method of payment. However, since providers have requested that we consider direct deposit as an alternative method to hard copy checks, we believe that most, if not all, providers meeting the specified conditions will request direct deposit as the preferred method of payment.

We anticipate that Medicare administrative costs will be reduced through the elimination of those activities required for the preparation and issuance of hard copy checks and the postage costs, and the transmission of the electronic remittance notices in lieu of the paper notice for those claims being converted to the direct deposit method of payment.

We do not believe this final notice will have a significant net effect on the timing of Medicare benefit payments and thus the amount of Medicare benefit outlays. Since we are prohibiting providers from picking up checks, providers that previously have done so, whether they receive their payments through the mail or electronic funds transfer, will receive their payments more slowly than before. However, providers who continue to receive their payments through the mail will experience no change, while providers who currently receive payments through the mail, but now elect to receive them through electronic funds transfer, will benefit from the convenience of electronic payment mechanisms.

During the period since the notice with comment period was published in the **Federal Register** on July 11, 1991, we have explored electronic funds transfer at great length with several fiscal intermediaries who are testing direct deposit on a pilot basis. We believe that electronic funds transfer will result in immediate short-term Medicare program savings due to the prohibition on provider pickup of checks as specified in section II of this notice. Curtailing the practice of check pickup will not only result in Medicare program benefits savings, but will result in more efficient provider payment. We do not anticipate that the outlay of Medicare program benefits due to the efficiencies associated with direct deposit will outweigh the short-term savings derived from the prohibition on provider pickup of checks. Therefore, we conclude that it is likely that the effects of these various payment methods will offset each other, resulting in little net effect on the Medicare budget.

We have determined that a regulatory impact analysis is not required for this final notice, since these procedures will not have an effect on the economy of $100 million or more or meet any of the other Executive Order 12291 criteria. Further, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

**Authority:** Secs. 1815(a) and 1835(a) of the Social Security Act (42 U.S.C. 1395g(a) and 1395n(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: July 24, 1992.

**William Toby,**

*Acting Administrator, Health Care Financing Administration.*

Approved: August 14, 1992.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 92-25508 Filed 10-19-92; 8:45 am]

BILLING CODE 4120-01-M

## Health Resources and Services Administration

### Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1992:

*Name:* Maternal and Child Health Research Grants Review Committee

*Date and Time:* November 4-6, 1992, 9 a.m.

*Place:* Conference Room N, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 4, 1992, 9 a.m.-10 a.m.

Closed for remainder of meeting.

*Purpose:* To review research grant applications in the program area of maternal and child health administered by the Maternal and Child Health Bureau.

*Agenda:* The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 4 at 10 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr. Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 18A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda Items are subject to change as priorities dictate.

Dated: October 16, 1992.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 92-25501 Filed 10-20-92; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Public Health Service Award for Exceptional Achievement in Orphan Products Development

**AGENCY:** Office of the Assistant Secretary for Health, HHS.

**ACTION:** Solicitation of nominations for the PHS Award for Exceptional Achievement in Orphan Products Development.

**SUMMARY:** The Office of the Assistant Secretary for Health and the Orphan Products Board are soliciting nominations for the PHS Award for Exceptional Achievement in Orphan Products Development. This award, which is presented by the Assistant Secretary for Health, is intended to encourage and give recognition to individuals or groups in the public and private sectors who engage in research or aid significantly in the development of orphan products for rare diseases or conditions.

**ADDRESSES:** Nominations should be sent to Dr. Richard J. Bertin, Executive Secretary; Orphan Products Board; Office of Orphan Products Development (HF-35); Food and Drug Administration; 5600 Fishers Lane; Rockville, MD 20857, and should be received by December 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard J. Bertin, Executive Secretary; Orphan Products Board; Office of Orphan Products Development (HF-35); Food and Drug Administration; 5600 Fishers Lane; Rockville, MD 20857. Phone: (301) 443-4903; FAX (301) 443-4915.

**SUPPLEMENTARY INFORMATION:** To be considered for this award, individuals or organizations must meet at least one of the following criteria:

1. Contribution of time, talent and/or resources that resulted in a significant achievement in the development and/or availability of orphan products for rare diseases or conditions.
2. Exhibition of outstanding leadership in directing a program that advances the cause of orphan products for rare diseases or conditions.
3. Achievement of a scientific or technical breakthrough in the conception, evaluation, synthesis, or manufacture of an orphan product.
4. A single action or sustained activity that enhances orphan product development through work in research laboratories, clinics or in the community, or through other humanitarian activities.

The nomination should provide the following:

1. The name of the individual or individuals or, in the case of an organization, its and the name and title of the director and location.
2. A narrative statement not to exceed one page describing the nominee's contribution(s).
3. The names, addresses and telephone numbers of three persons or organizations familiar with the contribution(s) of the nominee. This can include the candidate, or members of his/her organization.
4. A suggested citation of 25 words or less.
5. Name, address and phone of nominating individual or organization.

Nominations may be submitted at any time during the year but will be considered on an annual basis by the Board. The awards will next be presented at the public meeting of the Orphan products Board which will take place in April or May of 1993. In order to be considered for the current cycle, nominations must be received by c.o.b., Friday, December 4, 1992.

Dated: October 14, 1992.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 92-25506 Filed 10-20-92; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-92-3360; FR-3194-N-03]**

### Announcement of Funding Awards for HOPE for Homeownership of Single Family Homes Program (HOPE 3)

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of funding award.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the funding decisions made by the Department in a competition for funding under a Notice of Funding Availability for HOPE for Homeownership of Single Family Homes Program (HOPE 3), published on January 14, 1992 (57 FR 1620). The announcement contains the names and addresses of the award winners and the amounts of the awards.

**DATES:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Garrity, Office of Affordable Housing Programs, room 7158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0324. The TDD number for the hearing impaired is (202) 708-2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The purpose of the competition was to make available funding for grants under the HOPE for Homeownership of Single Family Homes Program (HOPE 3). (HOPE is an acronym for Homeownership Opportunity for People Everywhere.) The HOPE 3 program, which was authorized by the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990), provides planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out approved homeownership programs for eligible families.

The HOPE 3 grants, totaling almost $95 million, will provide grant funds to public agencies, private nonprofit organizations, and cooperative associations to create homeownership opportunities for up to 9,300 low-income families who are first-time homebuyers. HOPE 3 awards were made in 42 states, the District of Columbia, Puerto Rico, and the Virgin Islands. Recipients were chosen in a national competition under selection criteria announced in the January 14 NOFA and described more fully in program guidelines published with the NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the names, addresses, and amounts of the awards are attached to this notice.

Dated: October 15, 1992.

**Randall H. Erben,**

*Acting Assistant, Secretary for Community Planning and Development.*

HOPE III Implementation Grants— FY 1992

| Applicant | Location | Grant amount |
|---|---|---|
| **REGION I** | | |
| New Hampshire Housing Finance Agency | New Hampshire (statewide) | $583,000 |
| City of Boston | Boston, MA | 1,598,126 |
| Rural Housing Improvement, Inc | Worcester/Middlesex MA | 512,111 |
| Cranston Community Action Program | Cranston/Warwick, RI | 743,763 |
| | | $3,437,000 |
| **REGION II** | | |
| City of Syracuse | Syracuse, NY | $500,000 |
| City of Albany | Albany, NY | 450,000 |
| City of Trenton | Trenton, NJ | 2,000,000 |
| Bridgeton Housing Development Corp | Bridgeton, NJ | 836,520 |
| City of Buffalo | Buffalo, NY | 503,090 |
| New York City Housing Authority | New York, NY | 2,520,946 |
| Onondaga County | Onondaga County, NY | 350,000 |
| City of New York | New York, NY | 2,039,444 |
| | | $9,199,000 |

HOPE III IMPLEMENTATION GRANTS— FY 1992—Continued

| Applicant | Location | Grant amount |
|---|---|---|
| **REGION III** | | |
| Philadelphia Neighborhood Enterprise | Philadelphia, PA | $706,590 |
| St. Ambrose Housing Aid Center, Inc | Baltimore, MD | 300,000 |
| Peoples Homesteading Group | Baltimore, MD | 474,360 |
| Urban Redevelopment Authority of Pittsburgh | Pittsburgh, PA | 2,430,000 |
| Maryland Housing Research Corp | Baltimore, MD | 848,000 |
| Resources for Human Development, Inc | Philadelphia, PA | 848,160 |
| Baltimore Corporation for Housing Partnerships | Baltimore, MD | 469,593 |
| Economic Opportunity Cabinet of Schuykill County, Inc | Schuykill County, PA | 312,742 |
| Allegheny West Foundation | Philadelphia, PA | 202,500 |
| Western Maryland Interfaith Development Corp | 5 Western MD counties | 503,496 |
| Manna, Inc | Washington, D.C. | 383,559 |
| | | $7,479,000 |
| **REGION IV** | | |
| City of Bessemer | Bessemer, AL | $42,000 |
| City of Tampa | Tampa, FL | 4,250,000 |
| Greater Miami Neighborhoods, Inc | Dade County, FL | 2,000,000 |
| Federation of Appalachian Housing Enterprises | Shelbyville, KY | 233,695 |
| Tampa Bay Community Development Corp | Clearwater, FL | 1,295,000 |
| Orange County | Orange County, FL | 635,411 |
| Shelby County | Memphis, TN | 576,000 |
| City of Jackson Housing Authority | Jackson, MS | 390,000 |
| Neighborhood Housing Services, Inc | Birmingham, AL | 864,725 |
| Northwest Tennessee Economic Development Council | 10 Tennessee counties | 236,467 |
| Chattanooga Neighborhood Enterprise | Chattanooga, TN | 997,000 |
| Highpoint Housing Authority | High Point, NC | 885,600 |
| City of West Palm Beach | West Palm Beach, FL | 875,000 |
| Knox Housing Partnership, Inc | Knoxville, TN | 625,752 |
| Overview Housing Assistance | 20 Georgia counties | 1,117,760 |
| City of Jacksonville | Jacksonville, FL | 507,000 |
| Greenville County Redevelopment | Greenville, SC | 288,000 |
| Neighborhood Housing Services, Inc | Savannah, GA | 551,590 |
| | | $16,371,000 |
| **REGION V** | | |
| Cleveland Housing Network, Inc | Cleveland, OH | $735,000 |
| New Cities Community Development Corp | Chicago, IL | 2,836,000 |
| Luthern Housing Corp | East Cleveland, Oh | 150,000 |
| Columbus Housing Partnership, Inc | Columbus, OH | 508,000 |
| Homesteading and Urban Redevelopment Corp | Cincinnati, OH | 1,500,000 |
| City of Rockford | Rockford, IL | 615,760 |
| City of Minneapolis | Minneapolis, MN | 1,250,000 |
| Flint Neighborhood Improvement and Preservation Project, Inc | Flint, MI | 750,000 |
| City of Columbus | Columbus, OH | 750,000 |
| City of Milwaukee | Milwaukee, WI | 1,500,000 |
| East Akron Nighborhood Development Corp | Akron, OH | 363,700 |
| Cuyahoga County | Cuyahoga County, OH | 480,000 |
| CAP Services, Inc | 4 Wisconsin Counties | 125,000 |
| City of Indianapolis | Indianapolis, IN | 1,474,540 |
| | | $13,038,000 |
| **REGION VI** | | |
| City of Dallas | Dallas, TX | $825,000 |
| ACORN Housing Corp | Little Rock, AR | 447,890 |
| City of Austin | Austin, TX | 3,125,000 |
| Texas Department of Housing & Community Affairs | 6 Texas citites | 989,000 |
| City of Lubbock | Lubbock, TX | 1,000,000 |
| City of West Memphis | West Memphis, AR | 500,250 |
| City of Grand Prairie | Grand Prairie, TX | 300,000 |
| City of Enid | Enid, OK | 110,000 |
| Rural Housing, Inc | Albuquerque, NM | 933,410 |
| City of College Station | College Station, TX | 500,000 |
| City of New Orleans | New Orleans, LA | 378,000 |
| Texas Department of Housing & Community Affairs | Nolan & Mitchell Counties | 396,000 |
| City of Port Arthur | Port Arthur, TX | 318,000 |
| City of Tulsa | Tulsa, OK | 268,250 |
| Tarrant County Housing Partnership | Tarrant County, TX | 2,478,000 |
| Housing Authority, Choctaw Nation of Oklahoma | Multi-county southeast OK | 2,285,200 |
| | | $14,854,000 |

## HOPE III IMPLEMENTATION GRANTS— FY 1992—Continued

| Applicant | Location | Grant amount |
|---|---|---|
| **REGION VII** | | |
| Menonite Housing Rehabilitation Services, Inc | Wichita, KS | $629,625 |
| Kansas City Homestead Authority | Kansas City, MO | 1,000,000 |
| Catholic Commission on Housing | St. Louis, MO | 235,180 |
| City of Topeka | Topeka, KS | 401,475 |
| Fergson, Neighborhood Improvement Program | Ferguson, MO | 30,000 |
| Operation Impact | St. Louis, MO | 1,038,720 |
| | | $3,335,000 |
| **REGION VIII** | | |
| City and County of Denver | Denver, CO | $875,000 |
| Pueblo Housing Authority | Puelbo, CO | 312,287 |
| City of Colorado Springs | Colorado Springs, CO | 794,910 |
| Salt Lake Community Development Corp | Salt Lake City, UT | 185,000 |
| District 7 Human Resource Development Council | Billings, MT | 189,000 |
| Commerce City Housing Authority | Commerce City, CO | 300,000 |
| City of Casper | Casper, WY | 250,000 |
| Rocky Mountain Human Services Coalition | Denver area, CO | 735,000 |
| City of Aurora | Aurora, CO | 533,000 |
| Denver Habitat for Humanity | Denver area, CO | 119,803 |
| | | $4,294,000 |
| **REGION IX** | | |
| City of Tuscon | Tuscon, AZ | $2,622,302 |
| Pima County | Pima County, AZ | 610,000 |
| ACORN Housing Corp. Inc | Phoenix, AZ | 1,683,213 |
| Neighborhood Housing Services, Inc | Phoenix, AZ | 281,055 |
| Chicanos por la Causa, Inc | Phoenix, AZ | 596,150 |
| Housing for Mesa, Inc | Gilbert/Mesa, AZ | 222,781 |
| Human Action for Chandler | Chandler/Gilbert/Tempe, AZ | 1,650,000 |
| Valley-Community Revitalization Project, Inc | Phoenix, AZ | 152,000 |
| Rural California Housing Corp | Sacramento, CA | 450,000 |
| Women's Development Center | Las Vegas, NV | 407,600 |
| Ctly of Pomona | Pomona, CA | 812,160 |
| Homeward Bound | Maricopa County, AZ | 702,000 |
| Neighborhood Housing Services, Inc | Santa Ana, CA | 427,500 |
| | | $10,616,761 |
| **REGION X** | | |
| City of Spokane | Spokane, WA | $725,250 |
| City of Yakima | Yakima, WA | 701,000 |
| Pierce County | Pierce County, WA | 866,820 |
| | | $2,293,070 |

## HOPE III PLANNING GRANTS— FY 1992

| Applicant | Location | Grant amount |
|---|---|---|
| **REGION I** | | |
| Community Concepts, Inc | Androscoggin/Oxford Co., ME | $100,000 |
| Southwestern Community Services, Inc | Claremont, NH | 48,500 |
| Housing Allowance Project, Inc | Hampden & Hampshire Co., MA. | 89,774 |
| | | $238,274 |
| **REGION II** | | |
| City of Salem | Salem, NJ | $57,700 |
| Erie County | Lackawanna, NY | 50,000 |
| Utica Community Action, Inc | Utica, NY | 100,000 |
| La Casa de Don Pedro, Inc | Newark, NJ | 100,000 |
| Long Island Housing Partnership, Inc | Brookhaven, NY | 70,000 |
| Bishop Sheen Ecumenical Housing Foundation | Livingston, Monroe, & Yates Co's, NY. | 44,200 |
| Housing Opportunities, Inc | Rochester, NY | 100,000 |
| N.J. Department of Community Affairs | Newark, NJ | 100,000 |
| Schenectady Municipal Housing Authority | Schenectady, NY | 100,000 |
| County of Orange | Orange County, NY | 80,600 |
| City of Plainfield | Plainfield, NJ | 55,500 |
| Homesite Development Corp | Cayuga County, Auburn, NY | 24,640 |
| Volunteers of America Delaware Valley, Inc | Camden, NJ | 64,364 |

HOPE III PLANNING GRANTS— FY 1992—Continued

| Applicant | Location | Grant amount |
|---|---|---|
| Monarch Housing Associates, Inc | Atlantic County, NJ | 93,246 |
| | | $1,040,250 |
| **REGION III** | | |
| United Hands Community Land Trust | Philadelphia, PA | $98,025 |
| Advocate Community Development Corp | Philadelphia, PA | 100,000 |
| Northwest Baltimore Corp | Baltimore, MD | 100,000 |
| New Kinsington Community Development Corp | Philadelphia, PA | 49,000 |
| Telamon Corp | Campbell/Henry/Pitts Co's, VA | 60,650 |
| Scranton Neighbors Housing Services, Inc | Scranton, PA | 28,753 |
| Interfaith HDC of Bucks County | Bucks County, PA | 81,854 |
| Middle East Community Development Corp | Baltimore, MD | 85,700 |
| Chester Community Improvement Project | Chester, PA | 20,000 |
| Huntington, West Virginia Public Housing Authority | Huntington, WV | 100,000 |
| Appalachia Service Project Corp | Wise/Lee/Scott Co's, VA | 50,767 |
| Lynchburg Community Action Group | Lynchburg, VA | 64,377 |
| | | $839,126 |
| **REGION IV** | | |
| Community Service Program of West Alabama, Inc | Lamar/Hale/Gibb Counties, AL | $75,000 |
| North Carolina Housing Finance Agency | Nonmetro/Nonentitled areas | 78,700 |
| Greater Greenville Housing and Revitalization | Greenville, MS | 69,550 |
| Virgin Islands Housing Finance Authority | St. Croix, VI | 100,000 |
| Neighborhood Housing Opportunities | Memphis, TN | 76,130 |
| City of Gulfport | Gulfport, MS | 38,360 |
| City of San Juan | San Juan, PR | 100,000 |
| Municipality of Bayamon | Bayamon, PR | 100,000 |
| South Delta Planning District | Bolivar/Sharkey/Wash. Co's MS. | 100,000 |
| Macon Heritage Foundation, Inc | Macon, GA | 87,998 |
| Downtown Housing Improvement Corp | Wake County, NC | 57,700 |
| City of Paducah | Paducah, KY | 36,300 |
| Unified Government of Athens-Clarke County | Athens, GA | 100,000 |
| City of Covington | Covington, KY | 100,000 |
| Elmore County Community Action Committee | Autauga/Elmore Co's, AL | 100,000 |
| Housing Opportunity, Inc | Banks/Hall/Union, Co's, GA | 100,000 |
| Coalition for Tennesseans with Disabilities | Nashville, TN | 97,415 |
| Vicksburg, Inc | Vicksburg, MS | 50,000 |
| Santee-Lynches Affordable Housing Community Development Corp | Clarendon/Lee Co's, SC | 100,000 |
| Richmond County | Richmond County, GA | 90,000 |
| North Carolina Land Trustees, Inc | Durham County, NC | 59,000 |
| Indiantown Nonprofit Housing, Inc | Indiantown, FL | 43,500 |
| Jefferson County Housing Authority | Jefferson County, AL | 100,000 |
| Creative Compassion, Inc | Crossville, TN | 45,000 |
| Lexington-Fayette County | Lexington-Fayette County, KY | 45,000 |
| Golden Triangle Planning & Development District | Choctaw/Clay/Winton Co's, MS. | 100,000 |
| City of Lakeland | Lakeland, FL | 50,000 |
| City of Delray Beach | Delray Beach, FL | 77,500 |
| Wil-Low Nonprofit Housing Corp., Inc | Montgomery, AL | 100,000 |
| City of Daytona | Volusia County, FL | 65,000 |
| Reid Park Community Development Corp | Charlotte, NC | 85,600 |
| Brevard County | Brevard County, FL | 100,000 |
| City of Albany | Albany City/Doughterty Co's, GA. | 60,000 |
| Sandhills Community Action Program | Anson/Rich./Mont. Co's, NC | 100,000 |
| Lee County Community Redevelopment Agency | Unicorporated Lee Co., FL | 99,000 |
| | | $2,786,753 |
| **REGION V** | | |
| Ford Heights Community Service Organization, Inc | Memphis, TN | 76,130 |
| Pontiac Area Lighthouse, Inc | Pontiac, MI | 58,200 |
| City of Duluth | Duluth, MN | 65,700 |
| University Settlement, Inc | Cleveland, OH | 100,000 |
| Adams and Brown Counties Economic Opportunities, Inc | Adams and Brown Co's, OH | 100,000 |
| Lansing Reinvestment Corp | Lansing, MI | 54,000 |
| U-SNAP-BAC Non-Profit Housing Corp | Detroit, MI | 91,000 |
| East Chicago Housing Authority | East Chicago, IN | 33,000 |
| West Detroit Interfaith | Detroit, MI | 67,000 |
| Stark Metropolitan Community Housing Authority | Alliance, OH | 100,000 |
| Montgomery Co. Comm. Action Agency | Dayton, OH | 100,000 |
| Allen Metro Housing Authority | Lima, OH | 62,700 |
| South Bend Housing Authority | South Bend, IN | 97,760 |
| Faith Housing, Inc | Franklin County, OH | 100,000 |
| Core City Neighborhood | Detroit, MI | 50,000 |
| Central Wisconsin CA Council | Adams/Sauk/Dodge Co's, WI | 32,409 |

HOPE III PLANNING GRANTS— FY 1992—Continued

| Applicant | Location | Grant amount |
|---|---|---|
| East Side Neighborhood Development | St. Paul, MN | 79,872 |
| NEW CAP, Inc | Florence/Oconton/Viles Co. WI | 12,000 |
| Proviso-Leyden Council for Community Action, Inc | Cook County, IL | 52,000 |
| City of Lorain | Lorain, Oh | 95,178 |
| Habitat for Humanity | Wayne County, MI | 68,000 |
| County of Genesee | Genesee County, MI | 55,500 |
| Portage Metropolitan Housing Authority | Portage County, OH | 84,675 |
| Madison Area CLT Corp | Madison, WI | 61,500 |
| The Barnabas Project | Chicago, IL | 69,060 |
| | | $1,724,664 |
| **REGION VI** | | |
| New Orleans Resources for Independent Living, Inc | New Orleans, LA | $70,000 |
| New Shreveport Community Housing Development | Shreveport, LA | 100,000 |
| City of Waco Housing Authority | Waco, TX | 100,000 |
| County Area United Services Enterprises, Inc | Multiple | 75,635 |
| North AR Human Service System, Inc | White River Region, AR | 99,040 |
| Slidell Housing Authority | St. Tammany Parish, LA | 83,850 |
| Guadalupe Economic Services Corp | El Paso, TX | 100,000 |
| Crowley's Ridge Development Council Inc | Multiple | 47,150 |
| Dallas Habitat for Humanity | Dallas, TX | 55,000 |
| Nueces County Community Action Agency | Corpus Christi, TX | 89,800 |
| Caprock Community Action Association | Multiple Counties | 79,660 |
| Delaware Tribe of Indians Housing Authority | Craig County, OK | 100,000 |
| Community Organization Poverty Elimination | North Little Rock, AZ | 78,100 |
| Housing Partners of Tulsa | Tulsa, OK | 45,800 |
| Colonias Del Valle, Inc | Hidalgo County, TX | 100,000 |
| Community Action Program West | South & West San Antonio, TX | 95,000 |
| South Plains Community Action Assoc | Multiple | 92,679 |
| Stillwater Housing Authority | Stillwater, OK | 100,000 |
| Southern Oklahoma Dev. Assoc. (SODA) | Carter County, OK | 100,000 |
| Fort Bend County | Fort Bend County, TX | 80,000 |
| City of Garland | Garland, TX | 70,000 |
| BIG 5 Community Services | Five Counties, Southern, OK | 40,300 |
| | | $1,802,014 |
| **REGION VII** | | |
| Citizens Housing Information Council | Kansas City, KS | 51,884 |
| West Central Comm. Action | Seven counties in Western MO | 52,000 |
| St. Louis County Housing Authority | St. Louis County, MO | 55,250 |
| Kansas City, KS Housing Authority | Kansas City, KS | 74,114 |
| Omaha 100, Inc | Omaha, NE | 87,825 |
| Operation Threshold | Three counties, Waterloo, IA | 62,500 |
| City of Lincoln | Lincoln, NE | 30,140 |
| Metro Area Housing Program, Inc | Cedar Rapids, IA | 47,776 |
| Northside Preservation Commission | St. Louis, MO | 100,000 |
| Indian Center, Inc | Scottsbulf, NE | 81,351 |
| Des Moines Housing Authority | Des Moines, IA | 93, 568 |
| Eastern Iowa Regional Housing Corp | Eastern IA | 75,000 |
| | | $811,408 |
| **REGION VIII** | | |
| Colorado Department of Institutions | State of Colorado | $17,700 |
| Fort Collins Housing Authority | Fort Collins, CO | 22,000 |
| North Dakota Housing Finance Agency | State of North Dakota | 76,268 |
| | | $115,968 |
| **REGION IX** | | |
| Fresno Housing Authority | Fresno, CA | $71,720 |
| Fresno County Housing Authority | Sanger, CA | 66,720 |
| City of Elroy Housing Authority | Elroy, AZ | 73,000 |
| Sacramento Housing Authority | Sacramento, CA | 33,925 |
| Coachella Valley Housing Coalition | Palm Springs, CA | 71,791 |
| American Indian Assoc. of Tucson, Inc | Tucson, Pima County, AZ | 72,145 |
| | | $389,301 |
| **REGION X** | | |
| Oregon Housing and Associated Services, Inc | Marion & Polk Co's, OR | $97,208 |
| Neighborhood Housing Services, Inc | Anchorage, AK | 53,873 |
| Inland Empire Residential Resources | Spokane County, WA | 90,000 |
| | | $241,081 |

[FR Doc. 92-25397 Filed 10-20-92; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

**AGENCY:** Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 101–512, the Office of the Assistant Secretary Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

**DATES:** November 18, 19, and 20, 1992; 8 a.m. to 5 p.m.; The Inn—Best Western, 2009 W. Hwy 66; and the Holiday Inn, 2915 W. Hwy 66; in Gallup, New Mexico. The meeting of the Task Force is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 4140 MIB; 1849 C Street, NW.; Washington, DC 20240; telephone number (202) 208–4173.

**SUPPLEMENTARY INFORMATION:** The Task Force welcomes public oral and written comments, and time is set aside on the agenda for public comments on Wednesday, November 18, 1992, and Friday, November 20, 1992. Persons wishing to present written comments or speak to the Task Force may sign up in advance prior to the Public Comment time on Wednesday, November 18, 1992, for Wednesday's Public Comment, and all day on Thursday and prior to Public Comment time on Friday, November 20, 1992. Speakers are encouraged to prepared written testimony, background material, comments, and other documents for presentation to the Task Force because time for oral presentations may be limited. Also, written comments may be submitted by individuals unable to attend the meeting. Written comments that are not delivered to the Task Force meeting may be mailed to Veronica L. Murdock, Office of the Assistant Secretary—Indian Affairs, Mail Stop 4140 MIB, Department of the Interior, 1849 C Street NW., Washington, DC 20240. Discussion items for this meeting include: Meetings of all appropriate work groups as well as the newly formed Implementation Work Group and Report Writing Group; Survey results on the "Status Report and Preliminary Recommendations for Developing the Tribal Budget System"; and other issues as they arise. Time has been set aside for work group sessions with concentrations on the Implementation Workgroup, the Bureau's budget process, and the directive systems (BIAM/CFR/USC) under whcih the Bureau operates.

Dated: October 8, 1992.

**Eddie F. Brown,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 92–25542 Filed 10–20–92; 8:45 am]

BILLING CODE 4310–02–M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* 16 U.S.C. 1531, *et seq.*):

*Applicant:* Duke University Primate Research Center, Durham, NC, PRT–772901.

The applicant requests a permit to import two pair of golden bamboo lemurs (*Hapalemur aureus*), taken from the wild, from the Dept. of Water and Forests, Madagascar, for enhancement of propagation. The applicant proposes to participate in a breeding program for this species with a consortium of European zoos.

*Applicant:* Zoo Atlanta, Atlanta, GA, PRT–769909.

The applicant requests a permit to export two pair of captive-hatched Morelet's crocodiles (*Crocodylus moreletii*) to Aquarium Tiergarten, Vienna, Austria, for enhancement of propagation or survival of the species.

*Applicant:* Knoxville Zoological Gardens, Knoxville, TN, PRT–771744.

The applicant requests a permit to import one captive-born female and two wild-caught female Asian lions (*Panthera leo persica*) from Sakkarabaug Zoo, India, for enhancement of propagation of the species through captive breeding.

*Applicant:* John R. Evans, Cleveland, OH, PRT–773036.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M.G. Wienmand, "Longwood", Bedford, Republic of South Africa, for enhancement of survival of the species.

*Applicant:* Gary Matson d/b/a Matson's Laboratory, Milltown, MT, PRT–771746.

The applicant requests a permit to import up to 43 teeth from wild-caught wood bison (*Bison bison athabascae*) to determine age for the enhancement of survival of the species through population studies.

*Applicant:* Hunter Schuehle, San Antonio, TX, PRT–767310.

This amends the **Federal Register** notice published October 8, 1992. The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male red lechwe (*Kobus leche*), dama gazelle (*Gazella dama* supp.), barasingha (*Cervus duvauceli*), Eld's brow-antlered deer (*Cervus eldi*) and Arabian oryx (*Oryx leucoryx*) from his captive herd for the purpose of continued maintenance of the herd for enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432 Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business (hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 16, 1992.

Margaret Tieger,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 92-25553 Filed 10-20-92; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Weir Farm National Historic Site Ridgefield/Wilton, CT; Public Review Period for Draft Land Protection Plan

In accordance with Department of the Interior policy (47 FR 19784) and National Park Service guidelines (48 FR 21121), notice is hereby given that the National Park Service is releasing a Draft Land Protection Plan for Weir Farm National Historic Site.

The Land Protection Plan determines what lands or interest in lands require public ownership in order to ensure that the park's purpose, as outlined by Congress, is fully carried out. The plan identifies land protection options that may serve as alternatives to the fee simple acquisition of property.

The General Management Planning process for Weir Farm NHS is in progress and is expected to be completed in 1994. The recommendations of the Land Protection Plan relate directly to the draft management objectives and alternatives generated during the planning process. The Land Protection Plan will be revised in accordance with the recommendations of the final General Management Plan when completed.

This Land Protection Plan does not constitute an offer to purchase land or interests in land. The plan will generally guide future actions subject to the availability of funds, the donation of lands, and other constraints.

The draft Land Protection Plan will be available to the public on October 22, 1992. Written comments must be received by November 23, 1992. Copies of the draft Land Protection Plan are available for public review at the Wilton Public Library, Ridgefield Town Hall and Ridgefield Public Library, or may be obtained by calling Weir Farm National Historic Site at (203) 834-1896.

Comments should be addressed to Superintendent, Weir Farm National Historic Site, 735 Nod Hill Road, Wilton, Connecticut 06897.

Dated: October 13, 1992.

Steven H. Lewis,

*Acting Regional Director.*

[FR Doc. 92-25526 Filed 10-20-92; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-376X]

### The City of Mineral Wells, TX, et al.; Abandonment and Discontinuance Exemption; Between Mineral Wells and Weatherford, TX

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Commission exempts the City of Mineral Wells, TX (the City) and the Mineral Wells and Eastern Railway Company (MW&E), a class III shortline railroad, from the prior approval requirements of 49 U.S.C. 10903-10904, to permit the City to abandon, and MW&E to discontinue service over, a 21.21-mile line of railroad between milepost 1.54 at Weatherford and milepost 22.75 at Mineral Wells, in Parker and Palo Pinto Counties, TX, subject to the conditions that: (1) If during salvage operations significant buried cultural deposits are found, petitioners must immediately notify the U.S. Secretary of the Interior and the Texas Historical Commission; (2) petitioners shall conduct salvage operations in a manner that minimizes erosion, removal of vegetation, and accidental contamination resulting from the use of hazardous materials and fuels; and (3) the City, as owner of the line, must keep intact all the right-of-way underlying the track, including bridges and culverts and other structures, for a period of 180 days from the effective date of this decision to enable any State or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 24, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 23, 1992. Petitions to reopen must be filed by November 16, 1992.

**ADDRESSES:** Send pleadings referring to Docket No. AB-376X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives:
Mary Todd Carpenter, Suite 1107, 1700 K Street, NW., Washington, DC 20006; and
Frank J. Pergolizzi, 1224 Seventeenth Street, NW., Washington, DC 20036.

[1] See Exempt. of Rail Line Abandonment—Offers of Finan. Assit., 4 I.C.C. 2d 164 (1987).

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: October 14, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-25537 Filed 10-20-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments

will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

**Regular Submission**

(1) Prosecution of Drug Cases: A National Assessment.

(2) Office of Justice Programs.

(3) One-time.

(4) State of local governments. The assessment will survey a sample of local prosecutors to identify and assess effective drug prosecution methods, impediments to effective drug prosecution and determine the need for new strategies to enhance the prosecution of drug trafficking cases.

(5) 583 annual responses at .5 hours per response.

(6) 291.5 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: October 16, 1992.

**Don Wolfrey,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 92-25515 Filed 10-20-92; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**Background**

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

**List of Recordkeeping/Reporting Requirements Under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible data.

**Reinstatement**

Assistant Secretary for Mine Safety and Health Examinations and Tests of Electrical Equipment

1219-0067

On occasion

Businesses or other for-profit; Small Businesses or organizations

| Req section | Respondents | Frequency | Average time per response | Total |
|---|---|---|---|---|
| 30 CFR 75.313-1 | 2,481 | Monthly | ½ hour | 14,886 |
| 30 CFR 75.512 | 10,691 | Weekly | ½ hour | 277,966 |
| 30 CFR 77.602 | 38,214 | Monthly | 1 hour | 458,892 |
| 30 CFR 75.800-4 & 30 CFR 77.800-2: | | | | |
| Recordkeeping | 2,940 | Monthly | ¼ hour | 8,820 |
| Examination | 2,940 | Monthly | ½ hour | 17,640 |
| 30 CFR 75.800 & 30 CFR 77.800-2: | | | | |
| Recordkeeping | 1,436 | Monthly | ¼ hour | 4,308 |
| Examination | 1,436 | Monthly | ½ hour | 8,616 |
| 30 CFR 75.900-4: | | | | |
| Recordkeeping | 7,324 | Monthly | ½ hour | 43,944 |
| Examination | 7,324 | Monthly | 1 hour | 87,888 |
| 30 CFR 77.900-2: | | | | |
| Recordkeeping | 1,082 | Monthly | ¼ hour | 3,246 |
| Examination | 1,082 | Monthly | ½ hour | 6,492 |
| 30 CFR 75.1001-1(c): | | | | |
| Recordkeeping | 2,900 | 2 per year | ½ hour | 2,900 |
| Examination | 2,900 | 2 per year | 1 hour | 5,800 |
| Total Burden Hours | | | | 1,730,004 |

Requires coal mine operators to frequently examine, test, and properly maintain all electrical equipment and to keep records of the results of the examinations and tests.

**Revision**

Employment and Training Administration

Standard Job Corps Center Request for Proposal (RFP) and Related Contractor Information Gathering

1205–0219; ETA 6–37, 6–38, 6–39, 6–124, 6–125, 6–127, 6–128, 2181, 2181A, 2110, 3–28, 6–131 A/B/C, 6–106, 6–101, 6–104, 6–105, 6–106, 6–107, 6–108, 6–61, 6–102, 6–103, 6–40, 6–99, 6–97, 6–112, 6–135, 6–136, 6–142, 6–142B

On occasion, Weekly, Monthly, Quarterly, Annually

State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

| Form No. | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| ETA 6–37, 6–38, 6–39 | JC Centers | 108 | Quarterly | 15 minutes ea. |
| ETA 6–127 | JC Centers | 108 | Annually | 2 hours |
| ETA 6–125 | JC Centers | 108 | Annually | 15 minutes |
| ETA 6–128 | JC Centers | 108 | Annually | 2 minutes |
| ETA 2181, 2181A | JC Centers | 250 | Annually | 2 hours |
| ETA 2110 | JC Centers | 108 | Monthly | 2½ hours |
| ETA 6–124 | JC Centers | 108 | Annually | 1 hour |
| ETA 6–142A | JC Centers | 108 | Weekly | 33 minutes |
| ETA 6–142B | JC Centers | 108 | Monthly | 3 hrs 33 minutes |
| ETA 3–28 | JC Centers | 78 | 373 | 1 minute |
| Center Oper Plan | JC Centers | 78 | Annually | 28 hours |
| Maintenance Plan | JC Centers | 108 | Annually | 5 hours |
| C/M Welfare Plan | JC Centers | 108 | Annually | 2 hours |
| Annual VST (if applicable) | JC Centers | 108 | Annually | 4 hours |
| Energy Conservation | JC Centers | 108 | Annually | 5 hours |
| Outreach, Screening | JC Centers (if applicable) | 108 | Annually | 2 hours |
| Annual Staff Training | JC Centers | 108 | Annual | 1 hour |
| ETA 6–131A | Corpsmembers | 1,500 | One-time | 3 minutes |
| ETA 6–131B | Corpsmembers | 3,000 | One-time | 9 minutes |
| ETA 6–131C | Corpsmembers | 1,500 | One-time | 1 minute |
| ETA 6–106 | Corpsmembers | 60,000 | One-time | 3 minutes |
| ETA 6–101 | Corpsmembers | 500 | As needed | 3 minutes |
| ETA 6–104 | Corpsmembers | 10,000 | As needed | 1 minute |
| ETA 6–105 | Corpsmembers | 60,000 | Annually | 3 minutes |
| ETA 6–107 | Corpsmembers | 60,000 | Quarterly | 3 minutes |
| ETA 6–108 | Corpsmembers | 1,500 | Weekly | 3 minutes |
| ETA 6–61 | Corpsmembers | 60,000 | One-time | 9 minutes |
| ETA 6–102 | Corpsmembers | 3,500 | As needed | 9 minutes |
| ETA 6–103 | Corpsmembers | 250 | As needed | 3 minutes |
| ETA 6–40 | Corpsmembers | 60,000 | One-time | 2 minutes |
| ETA 6–99 | Corpsmembers | 60,000 | One-time | 9 minutes |
| ETA 6–97 | Corpsmembers | 60,000 | One-time | 2 minutes |
| ETA 6–112 | Corpsmembers | 60,000 | One-time | 1 minute |
| ETA 6–135 | Corpsmembers | 60,000 | One-time | 1 minute |
| ETA 6–136 | Corpsmembers | 60,000 | One-time | 9 minutes |
| TWX Auth Med Terms | Corpsmembers | 1,500 | Occasionally | 1 minute |
| Procurement activity | JC Contractors | 4 | As needed | 2,200 hours |
| Total Burden Hours | | | | 128,142 |

Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurements and Federal paperwork requirements for contract operators of such centers.

**Extension**

Employment and Training Administration

1205–0310; ETA 9035

Other

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

| Form No. | Respondents | Average time per response |
|---|---|---|
| 9035 | 50,000 | 1 hour |
| Complaint process | 200 | 15 minutes |
| Total Burden Hours | | 50,200 |

The information provided on the 9035 form, by employers seeking to use aliens in specialty occupations on H–1B visas, will permit DOL to meet Federal responsibilities for program administration, management and oversight.

Signed at Washington DC this 15th day of October, 1992.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 92–25442 Filed 10–20–92; 8:45 am]

BILLING CODE 4510–30–M

## Employment and Training Administration

[TA-W-27,398]

### Atlas Bradford; Houston, TX and Operating at Various Other Locations in the Following States: TA-W-27,398A Oklahoma, TA-W-27,398B, Louisiana, TA-W-27,398C Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 11, 1992, applicable to all workers of the subject firm in Houston, Texas. The Notice will soon be published in the Federal Register.

At the request of the State Agency the Department reviewed the certification for workers of Atlas Bradford in Houston, Texas. New information from the company shows that worker separations occurred in other location in Louisiana, Oklahoma and Texas.

The intent of the Department's certification is to include all workers of Atlas Bradford who were affected by increased imports of oilfield tubing and casing.

The amended notice applicable to TA-W-27, 398 is hereby issued as follows:

All workers of Atlas Bradford, Houston, Texas and operating at various other locations in the States Texas and at various locations in Oklahoma and Louisiana who became totally or partially separated from employment on or after June 11, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of October 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-25439 Filed 10-20-92; 8:45 am]

BILLING CODE 4510-30-M

## Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 2, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 2, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC this 5th day of October 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/Workers/Firm) | Location | Date received | Date of petition | Petition number | Articles produced |
|---|---|---|---|---|---|
| Emerson Quiet Kool (IUE) | Woodbridge, NJ | 10/05/92 | 09/18/92 | 27,865 | Room Air Conditioners & Dehumidifiers. |
| Emerson Quiet Kool (IUE) | Edison, NJ | 10/05/92 | 09/18/92 | 27,866 | Room Air Conditioners & Dehumidifiers. |
| Circuitech (Co) | Eatontown, NJ | 10/05/92 | 09/15/92 | 27,867 | Circuit Boards. |
| Spooner Energy, Inc (Wkrs) | Jackson, MS | 10/05/92 | 09/15/92 | 27,868 | Oil and Gas Exploration. |
| Monessen, Inc (USWA) | Monessen, PA | 10/05/92 | 09/21/92 | 27,869 | Coke For Treating Steel. |
| JAPEX (U.S.) Corp. (Co) | Houston, TX | 10/05/92 | 09/21/92 | 27,870 | Crude Oil and Natural Gas. |
| AlloyTek (UAW) | Grandville, MI | 10/05/92 | 09/25/92 | 27,871 | Aircraft Engine Parts. |
| Douglas Aircraft Co (UAW) | Long Beach, CA | 10/05/92 | 09/25/92 | 27,872 | Commercial Aircraft. |
| Doyon Drilling, Inc (Wkrs) | Anchorage, AK | 10/05/92 | 09/24/92 | 27,873 | Drilling of Oil Wells. |
| Lor Rog Industries, Inc (Wkrs) | Joplin, MO | 10/05/92 | 09/16/92 | 27,874 | Carring Cases for Computers. |
| Skynasaur, Inc (Wkrs) | Louisville, CO | 10/05/92 | 09/21/92 | 27,875 | Nylon Stunt Kites. |
| SYTECH Corp (Wkrs) | Houston, TX | 10/05/92 | 09/23/92 | 27,876 | Seismic Data Processing. |
| General Electric Aerospace Div (IAMAW) | Utica, NY | 10/05/92 | 09/25/92 | 27,877 | Circuit Boards. |
| Douglas Pacific Veneer, Inc (Wkrs) | Bandon, OR | 10/05/92 | 09/22/92 | 27,878 | Veneer (Wood). |
| ABB Vetco Gray (Wkrs) | Houston, TX | 10/05/92 | 09/24/92 | 27,879 | Oil Wellhead Equipment. |
| Fleisher Finishing, Inc | Waterbury, CT | 10/05/92 | 09/16/92 | 27,880 | Textile Finishing Services. |
| Grant Tensor Geophysical Corp (Wkrs) | Houston, TX | 10/05/92 | 09/21/92 | 27,881 | Seismic Data Processing. |
| American Optical Corp (Co) | Southbridge, MA | 10/05/92 | 09/21/92 | 27,882 | Glass/Plastic Eyewear Lenses. |
| Libbey-Owens-Ford (Wkrs) | Sherman, TX | 10/05/92 | 09/01/92 | 27,883 | Windows for Vehicles. |
| Teledyne Vasco (USWA) Monaca, Pa | Monaco, PA | 10/05/92 | 09/22/92 | 27,884 | Wrought Specialty Steel. |
| Clear Lumber Mfg. (Wkrs) | Sweet Home, OR | 10/05/92 | 09/21/92 | 27,885 | Softwood Lumber. |
| Teledyne Merla (Wkrs) | Garland, TX | 10/05/92 | 09/24/92 | 27,886 | Oilfield Services. |
| William Carter Co. (Wkrs) | Raymondville, TX | 10/05/92 | 09/18/92 | 27,887 | Children's Sleep and Under Wear. |
| William Carter Co. (Wkrs) | Harlingen, TX | 10/05/92 | 09/19/92 | 27,888 | Children's Sleep and Under Wear. |

[FR Doc. 92-25441 Filed 10-20-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,464]

### Newfield Publications Columbus, OH; Negative Determination Regarding Application for Reconsideration

By an application dated September 30, 1992, Local No. 234B of the Graphics, Communication International Union (GCIU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on August 31, 1992 and was published in the **Federal Register** on September 17, 1992 (57 FR 43028).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or.

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the subject firm is a package and distribution center for publications.

Investigation findings show that the workers do not produce an article within the meaning of section 223(3) of the Trade Act of 1974. This issue was fully addressed in the Department's notice of negative determination. The packaging and distributing of books and other publications would not provide a basis for a worker group certification.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of October 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 92-25438 Filed 10-20-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27, 797]

### Vandel Services, Inc., East Newark, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 14, 1992 in response to a worker petition which was filed on behalf of workers at Vandel Services, Incorporated, East Newark, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of October 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-25440 Filed 10-20-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27, 371]

### Yamato Lock Inspection Systems, Incorporated (Formerly Barkley and Dexter Laboratories, Incorporated) Fitchburg, MA; Affirmative Determination Regarding Application for Reconsideration

On September 15, 1992, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 28, 1992 and published in the **Federal Register** on September 17, 1992, (57 FR 43028).

The petitioner claims that the production of all metal detection systems was transferred offshore in April 1992, when Yamato Lock, a successor-in-interest company, purchased Barkley and Dexter.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of October 1992.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.*

[FR Doc. 92-25437 Filed 10-20-92; 8:45 am]
BILLING CODE 4510-30-M

## Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meetings of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, November 10, 1992, in suite N-3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Seventy-Seventh meeting of the Secretary's ERISA Advisory Council which will begin at 12:30 p.m., is to receive and discuss progress reports from each of the Council's work groups i.e., Individual Participant Rights; Health Care; Pension Coverage & Adequacy; Pension Investment Activity, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 3, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1992.

Signed at Washington, DC. This 15th day of October, 1992.

**David George Ball,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 92-25527 Filed 10-20-92; 8:45 am]
BILLING CODE 4510-29-M

### Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement

Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, two public meetings of the Working Group on Individual Participant Rights of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Monday, November 9, 1992, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Individual Participant Rights Working Group was formed by the Advisory Council to study issues relating to Individual Participants Rights for employee benefit plans covered by ERISA.

The purpose of the November 9 meeting is to review and discuss the Working Group's proposed report and proposed recommendations prior to submission to the full ERISA Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before November 4, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 4, 1992.

Signed at Washington, DC this 15th day of October, 1992.

**David George Ball,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 92–25528 Filed 10–20–92; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 92–65]**

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

**DATES:** November 4, 1992, 8:30 a.m. to 5:30 p.m.; November 5, 1992, 8:30 a.m. to 5:30 p.m.; and November 6, 1992, 8:30 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, room MIC–5, 300 E Street SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1430.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—OSSA Program Status and Outlook
—Research and Analysis (R&A) Vitality Study
—Strategic Planning Discussion
—Space Station Science Status and Plans
—Small Missions Program Plans
—Subcommittee Reports
—Committee Writing Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**John W. Caff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 92–25480 Filed 10–20–92; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

### Meeting

**AGENCY:** National Commission on Acquired Immune Deficiency Syndrome.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

**DATE AND TIME:** Tuesday, November 17, 1992—9 a.m.–5 p.m.; Wednesday, November 18, 1992—9 a.m.–12 p.m.

**PLACE:** Pan American Health Organization, 525 23rd Street, NW., Washington, DC.

**TYPE OF MEETING:** Open.

**FOR FURTHER INFORMATION CONTACT:** Roy Widdus, Ph.D. Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW, suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

**AGENDA:** The agenda for the Commission meeting Tuesday, November 17, will be "An Agenda for AIDS: Actions Needed in Early 1993". Discussions will include leadership of the national response, mobilizing the federal government, and recommendations to the President and Congressional leadership on actions in special areas that the Executive and Legislative branches of government should take in early 1993 to enhance the national response to the HIV/AIDS epidemic. The Commission will hold a business meeting on Wednesday, November 18.

Interpreting services for the deaf are available. Please call our TDD number (202) 254–3816 no later than Friday, November 6 to request services.

Dated: October 15, 1992.

**Roy Widdus,**

*Executive Director.*

[FR Doc. 92–25490 Filed 10–20–92; 8:45 am]

BILLING CODE 6820–CN–M

## NATIONAL SCIENCE FOUNDATION

### Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 16, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National

Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** John B. Talmadge at the above address or (202) 357–7817.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

*1. Applicant*

E. Imre Friedman, Department of Biological Science B–142, Florida State University, Tallahassee, FL 32306–2043

*Activity for Which Permit Requested*

Enter Site of Special Scientific Interest. At both locations, his party will arrive by helicopter, landing at sites determined in SSSI descriptions. They will camp for about five days at each site. They will set up automatic, solar-powered data loggers to monitor nanoclimates. They will collect rock material for laboratory work and will service automatic weather stations presently operating at both sites. Research at these classic sites is necessary for documentation and quantification of the environmental gradient in the McMurdo Dry Valleys, which ranges from habitats suitable for microbial life to those unsuitable for life.

Extraordinary care will be taken to preserve microbial habitats at both sites, and environmental impact will be reduced to the absolute minimum necessary to complete the research.

*Location*

Linnaeus Terrace (SSSI)
Battleship Promontory (SSSI)
(access to both locations by helicopter)

*Dates*

01/01/93–03/10/93

**John B. Talmadge,**

*Permit Office, Division of Polar Programs.*

[FR Doc. 92–25512 Filed 10–20–92; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 9–10, 1992, 8:30 a.m. to 5 p.m.

*Place:* Room 417, National Science Foundation, 1800 G St., NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Michael McGrath, Program Director, Division of Advanced Scientific Computing, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9776.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF Supercomputer Center's operation plans in accordance with the existing cooperative agreement.

*Agenda:* To review and evaluate the NSF Supercomputer Center's progress and plans for FY 93.

*Reason for Closing:* The Center being reviewed will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the Center. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–25486 Filed 10–20–92; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Archaeology; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 13–14, 1992; 9 a.m.

*Place:* National Science Foundation, 1800 G Street, NW., room 320, Washington, DC 20550.

*Type of Meeting:* Closed.

*Contact Person:* Dr. John E. Yellen, Program Director, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7804.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Archaeology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–25483 Filed 10–20–92; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 13, 1992; 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, room 306, 1800 G Street NW.

*Type of Meeting:* Closed.

*Contact Person:* John C. Cherniavsky, Head/OCDA, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7349.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review the evaluate CISE Institutional Infrastructure Small-Scale proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–25484 Filed 10–20–92; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Cultural Anthropology

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 9 & 10, 1992, 8:30 am.

*Place:* National Science Foundation, 1800 G. Street NW., rm 543, Washington, DC 20550.

*Type of Meeting:* Closed.

*Contact Person:* Raymond Hames, Program Director Cultural Anthropology, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7834, Room 320.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Cultural Anthropology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-25485 Filed 10-20-92; 8:45 am]

BILLING CODE 7555-01-M

## Committee of Visitors of the Advisory Committee for Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 12 and 13, 1992; 8:30 a.m.-5 p.m.

*Place:* Room 540B, 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-9591.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda:* To provide oversight review of the Geophysics Program.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Date: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-25481 Filed 10-20-92; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Education and Human Resources: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 12, 1992, 12:30 p.m.-5 p.m.; November 13, 1992, 8:30 a.m.-5 p.m.

*Place:* National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

*Type of Meeting:* Open.

*Contact Person:* Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, room 516, Washington, DC 20550, (202) 357-9522.

*Summary Minutes:* May be obtained from contact person listed above.

*Purpose of Committee:* To provide advice and recommendations concerning NSF support for Education and Human Resources.

*Agenda:* Review of FY 1992 Programs and Initiatives. Review of FY 1993 Programs and Initiatives. Strategic Planning for FY 1994 and Beyond.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-25487 Filed 10-20-92; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Law and Social Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 13-14, 1992, 9 a.m.-6 p.m.

*Place:* Room 523, National Science Foundation.

*Type of Meeting:* Part-Open.

*Contact Person:* Susan O. White, Program Director, Law and Social Science Program, Division of Social and Economic Science, room 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9567.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Open session: November 13, 1992, 1:30-2:30 p.m. To discuss trends and opportunities in the field of Law and Social Science. Closed session: November 13, 1992, 9 a.m.-1:30 p.m. and 2:30 p.m.-6 p.m.; November 14, 1992, 9 a.m.-6 p.m. To review and evaluate Law and Social Science proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

## Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* Friday, November 13, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 536, National Science Foundation, 1800 G Street NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Rolf M. Sinclair, Program Director for Cross Directorate Programs, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7996.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Research Experience for Undergraduates proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-25482 Filed 10-20-92; 8:45 am]

BILLING CODE 7555-01-M

# NUCLEAR REGULATORY COMMISSION

## Public Meeting on the Issues To Be Addressed in Guidance on the Storage of Low-Level Radioactive Mixed Waste

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to inform the public of a meeting to solicit early input from interested individuals and groups on the issues to be addressed in a joint Nuclear Regulatory Commission and Environmental Protection Agency (EPA) guidance document on the storage of mixed radioactive and hazardous waste. NRC and EPA are developing this guidance document to assist individuals currently storing low-level radioactive mixed waste to meet the regulatory requirements of the Atomic Energy Act of 1954, as amended (AEA), and the

Resource Conservation and Recovery Act of 1976, as amended (RCRA). Interested individuals may provide input to the agencies by participating in a public meeting on November 12, 1992, at the Mayflower/Stouffer Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036, telephone (202) 347–3000 from 8:30 a.m. until 4:30 p.m.

**Background**

Low-level radioactive mixed waste is waste that satisfies the definition of low-level radioactive waste in the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and contains hazardous waste that either (1) is listed as a hazardous waste in subpart D of 40 CFR 261 or (2) causes the waste to exhibit any of the hazardous waste characteristics identified in subpart C of 40 CFR 261. Low-level radioactive mixed waste is subject to regulation under both the AEA and RCRA. Generators of low-level radioactive mixed waste have expressed concerns to NRC and EPA about the difficulties and regulatory burdens associated with such joint regulation.

NRC and EPA are developing a joint guidance document on low-level radioactive mixed waste storage to assist individuals currently storing low-level radioactive mixed waste to meet the regulatory requirements under both the AEA and RCRA. The agencies recognize that some storage of low-level radioactive mixed waste will be necessary as a result of the current lack of adequate treatment and disposal capacity for this waste.

The LLRWPAA established a series of milestones, penalties, and incentives to ensure that States or Regional Compacts provide for the disposal of radioactive waste, including low-level radioactive mixed waste, by 1993. To date, progress in developing new disposal facilities has been limited. In addition, uncertainties about the amounts and types of low-level radioactive mixed waste, along with the complexities and burdens associated with complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for low-level radioactive mixed waste. As a result, licensees may need to store low-level radioactive mixed waste until adequate treatment and disposal capacity has been established.

Licensees have identified to NRC and EPA five issues where compliance with both agencies' regulations has caused concern or confusion in the regulated community. These issues are:

(1) Extended Storage of Low-Level Radioactive Mixed Waste for Decay-in-Storage;
(2) Inspection/Surveillance of Low-Level Radioactive Mixed Waste in Storage;
(3) Allowable Storage Practices and Procedures for Low-Level Radioactive Mixed Waste;
(4) Waste Compatibility, Segregation, and Spacing; and
(5) Storage Time Limitations and Capacity Variances and Exemptions.

NRC and EPA are developing joint guidance that identifies acceptable procedures to resolve these issues in compliance with both agencies' requirements.

**Conduct of the Meeting**

The agencies will conduct a public meeting on November 12, 1992, to solicit and discuss comments and suggestions from the regulated community, interested parties, and members of the public on the issues associated with low-level radioactive mixed waste storage. NRC and EPA are interested in obtaining comments from individuals on innovative procedures to address the issues outlined above and on any other low-level radioactive mixed waste storage issues that should be addressed in the joint storage guidance.

In order to give all interested individuals an opportunity to speak, the agencies will hold a roundtable discussion on the five issues outlined above for the first portion of the meeting and then solicit input on any other low-level radioactive mixed waste storage issues from the meeting attendees. Participation in the roundtable discussion will initially be limited to those individuals that have informed the agencies in advance of their interest in participating in the discussion. Pre-registered speakers will be given a maximum of 15 minutes to present comments or suggest procedures for resolving issues associated with low-level radioactive mixed waste storage. Discussions during this portion of the meeting will be limited to the five issues outlined above. After all of the registered speakers have been given an opportunity to present their comments and suggestions, the remaining time will be available for other individuals who have not preregistered to present comments or suggestions on low-level radioactive mixed waste storage issues.

Presentations during the open portion of the meeting will also be limited to those individuals that have informed the agencies of their interest in participating in the open portion of the meeting prior to the meeting. Speakers will be given the opportunity to speak for up to 15 minutes during the open portion of the meeting. The open portion of the meeting is intended to elicit input on additional low-level radioactive mixed waste storage issues which speakers believe should be addressed in the joint guidance document. This time allowance may be extended, on request for good cause, if the schedule of speakers permits this extension. The agencies may also adjourn the meeting before 4:30 p.m. based on participant interest.

Requests to participate in the roundtable discussion or speak during the open portion of the meeting should be submitted to EPA in writing prior to the meeting. The written requests should be addressed to Reid Rosnick, Mixed Waste Coordinator, Permits and State Programs Branch, Office of Solid Waste (OS–342), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Interested speakers should include in the written request a statement identifying the portion of the meeting (roundtable or open session) in which they wish to participate, the topics to be addressed in their presentation, the names and affiliations of the individual(s) that will speak, and the amount of time the speaker(s) will require (up to 15 minutes).

**FOR FURTHER INFORMATION CONTACT:** Dominick A. Orlando, Mixed Waste Project Manager, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2566; or Reid Rosnick, Mixed Waste Coordinator, Permits and State Programs Branch, Office of Solid Waste (OS–342), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260–4755.

Dated at Rockville, MD this 14th day of October, 1992.

For the U.S. Nuclear Regulatory Commission.

**Michael F. Weber,**

*Acting Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 92–25505 Filed 10–20–92; 8:45 am]
BILLING CODE 7590–01–M

## Advisory Committee on Nuclear Waste Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin; Meeting

The ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and

Range will hold a meeting on November 18, 1992, Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, November 18, 1992—8:30 a.m. until the conclusion of business*

The focus of this meeting will be on the significance of climate change as it may impact the performance of the proposed Yucca Mountain repository over the next 10,000 years. Specific topics include data identification, acquisition and interpretation, which can be used to predict potential changes to natural conditions at the site. Quality assurance and use of data in developing and validating computer models for predicting global and regional climate, as well as for characterizing the uncertainty in such predications will also be discussed. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will hear presentations by several experts in the field of climatology and hold discussions with the NRC staff and the DOE representatives, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492–9851) between 8:30 a.m. and 5:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 14, 1992.

**R.K. Major,**

*Chief, Nuclear Waste Branch*

[FR Doc. 92–25498 Filed 10–20–92; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 50–390 and 50–391]**

## Tennessee Valley Authority; Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published the Safety Evaluation Report, Supplement 10 (NUREG–0847, Supp. 10) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and in the Local Public Document Room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge orders by calling 202–275–2060. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 13th day of October, 1992.

For the Nuclear Regulatory Commission.

**Frederick J. Hebdon,**

*Director, Project Directorate II–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–25499 Filed 10–20–92; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

## Notice of a Proposed Extension of an Information Collection Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980, (title 44, U.S.C. chapter 35), this notice announces a request submitted to OMB to extend a clearance for collecting data from selected Federal agencies for general purpose statistics. On a biennial basis, geographic data not otherwise available to the Office of Personnel Management are collected using OPM Form 1312 or automated means. This report is completed by 23 agencies, and takes approximately 12 hours to complete, for a total burden of 276 hours. The data are used by the Office of Personnel Management to manage personnel programs and evaluate policy alternatives, and also by other executive branch agencies, and by Congressional staffs. For copies of the clearance package, call C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this data collection should be received on or before November 20, 1992.

**ADDRESSES:** Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, room 3002, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Randall T. Matke, (703) 908–8766, U.S. Office of Personnel Management..

**Douglas A. Brook,**

*Acting Director.*

[FR Doc. 92–25445 Filed 10–20–92; 8:45 am]

BILLING CODE 6325–01–M

## Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of open meeting.

**SUMMARY:** According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that the Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group will meet at the time and place shown below:

**DATES:** November 6, 1992, 1:30 p.m.

**PLACE:** U.S. Office of Personnel Management's Conference Center, room 1350, 1900 E Street NW., Washington, DC.

**AGENDA:** The focus of the November 6th meeting will be the discussion of issues and recommendations to enhance the employment of students and graduates from HBCU's in the Federal Government.

**FOR FURTHER INFORMATION CONTACT:** Patricia H. Paige, Chief, Recruiting Policy and Programs Division, Office of Personnel Management, room 6332, 1900 E Street NW., Washington, DC 20415.

**SUPPLEMENTARY INFORMATION:** The meeting is open to public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views.

Persons wishing to address the Advisory Group orally at the meeting should submit a written request no later than the close of business on October 21, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

U.S. Office of Personnel Management.

**Douglas A. Brook,**

*Acting Director.*

[FR Doc. 92-25446 Filed 10-20-92; 8:45 am]

BILLING CODE 6325-01-M

## The Presidential Commission On The Assignment Of Women In the Armed Forces

### Meeting

**SUMMARY:** The Presidential Commission on the Assignment of Women in the Armed Forces will hold its next hearing October 22d through October 24th. Presentations will be made on several domestic and international fact-finding trips. Commission discussion will center on the crucial "findings" and the issues which must be addressed in preparation for the Commission's final recommendation deliberations (November 2 and 3).

**LOCATION:** The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC, (202) 234-0700.

**DATES:** Thursday, October 22d/ Palladian Room-Level II 8am-5:30pm/ General Session. Friday, October 23d/ Palladian Room-Level II 8am-5:30pm/ General Session. Saturday, October 24th/Empire Room-Level III 8am-5:30pm/General Session.

**Note:** The next hearings of the Presidential Commission on the Assignment of Women in the Armed Forces are scheduled in Washington, DC, November 2-3 at the J.W. Marriott, and November 9-10 at the Crystal City Sheraton.

**STATUS:** Open to public.

**CONTACT:** Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk, (202) 376-6905.

Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102-190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

**W.S. Orr,**

*Staff Director.*

[FR Doc. 92-25514 Filed 10-20-92; 8:45 am]

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BILLING CODE 6820-CD-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-31319; File No. SR-NASD-92-29]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Periodic Account Statements

October 14, 1992.

On June 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and rule 19b-4 thereunder.[3] The proposal amends the NASD Rules of Fair Practice by requiring members to provide customers with quarterly account statements.

Notice of the proposed rule change, together with its terms of substance, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31131, September 1, 1992) and by publication in the Federal Register (57 FR 41156, September 9, 1992). No comments were received on the proposal. This order approves the proposed rule change.

The rule change approved herein amends Article III of the Rules of Fair Practice, requiring members to send periodic account statements at least once every quarter to customers having securities positions, funds, or any change in their account during the past quarter. The periodic account statements will include a description of all securities positions, money balances, and account activity in the account during the period.

The NASD does not currently require members to send periodic account statements to customers. SEC rule 15C3-2 [4] requires broker-dealers to send statements to customers every three months notifying them that free credit balances carried for their account may be used by broker-dealers or paid on demand to the customers. The requirement of rule 15C3-2, however, only applies if a customer has a free credit balance. The NASD is aware that some broker-dealers send only the notice required by rule 15c3-2 of the amount of the customer's free credit balance, but do not send account statements reporting all securities positions, money balances, and account activity since the last statement. As a result, these customers are not advised of the current status of their accounts, even when the status of the accounts may have changed.

The NSAD believes that, in the interest of customer protection, customers should be more fully informed of the status of their accounts. Therefore, subsection (a) of the proposed rule requires each general securities member to send customers a quarterly statement of account reporting any securities positions, money balances, or account activity in their account. The requirement may be satisfied by account statements that are sent more frequently than quarterly.

Subsection (b) of the proposed rule defines the term "account activity" to include all types of activity that may occur in a securities account with respect to "securities or funds in the possession or control of the member." Thus, this limitation exempts account activity relating to funds or securities not in control of the member, such as direct participation program ("DPP") securities where, after the initial purchase through the distributing broker-dealer, the general partner communicates directly with investors.

Section (c) defines the phrase "general securities member" as a member that calculates its net capital under SEC rule 15C3-1(a), [5] except for paragraphs (a)(2) or (a)(3)—that is, a broker-dealer required to maintain at least $25,000 in net capital. Subsection (c) further defines "general securities member" to exclude members who do not carry customer accounts or hold customer funds or securities. Thus, members whose business is limited to the sale of

[1] On August 6, 1992, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 reports the results of a member vote on the proposed rule change, which was published for member vote in NASD Notice to Members 92-30 (June 1992). The results of the member vote are as follows: 1827 voting in favor, 329 opposed, and 18 not voting, out of 2174 ballots received.

[2] 15 U.S.C. 78s(b)(1)(1988).

[3] 17 CFR 240.19B-4 (1992).

[4] 17 CFR 240.15c3-2 (1992).

[5] 17 CFR 240.15c3-1(a) (1992).

such products as variable contract insurance products, mutual funds, and unit trusts, or who do not carry accounts or hold customer funds or securities, are exempt from the provisions of the rule. Nevertheless, the member carrying the account or holding the funds or securities for such member will be responsible for complying with the rule.

The NASD believes that customers of members conducting a limited business are adequately informed and protected under various statutory and regulatory systems. The Investment Company Act of 1940, for example, currently requires issuers of variable contracts, mutual funds, and unit investment trusts to send semi-annual statements of portfolio and financial condition to contract holders and shareholders. Also, activity such as purchase, distribution, or redemption in connection with variable contracts, mutual funds, or unit trusts usually triggers a statement to the customer from the issuer, its agent, or a member firm.

Both subsections (b) and (c) exempt members from the periodic account statements requirement if the member does not carry customer accounts or hold customer funds or securities. The NASD does not believe that members, whether limited or general broker-dealers, should bear the burden of reporting information on securities or funds not in their possession—information which they may not be able to obtain or independently confirm. For example, when a customer purchases DPP units through a member, the funds received from the customer are forwarded to the general partner (through an escrow account), admission to the partnership is confirmed directly to the purchaser by the general partner, and all subsequent communications are usually between the general partner and the investor.

Subsection (d) of the proposed rule permits the NASD's Operations Committee to exempt any member from the provisions of the rule upon a showing of good cause. This would permit the NASD under unusual circumstances to except a member if application of the rule would be unnecessarily burdensome given the type of business it conducts and the nature of the accounts, securities, or funds involved, and if the goal of customer protection and information could be met under alternative arrangements.

The Commission finds that the proposed rule change is consistent with the Requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to "promote just and equitable principles of trades, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The Commission believes that requiring members to send periodic account statements to customers will serve the interests of customer protection. For this reason, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-25466 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-31318; File No. SR-NSCC-92-08]**

## Self-Regulatory Organization; National Securities Clearing Corporation; Filing of Proposed Rule Change Relating to Index Receipts

October 14, 1992

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on July 13, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-92-08) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enable NSCC to facilitate the clearance and settlement of index receipt products such as the Portfolio Depository Receipts ("PDRs") of the American Stock Exchange, Inc. ("AMEX").

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rule change is to allow NSCC to provide clearance and settlement services to facilitate the creation and redemption of index receipt products such as the AMEX's proposed PDRs.[2] The creation of an index receipt will require the NSCC member to deliver the shares comprising the index receipt to the trustee/issuer in exchange for a specified number of index receipts.[3] Upon redemption of an index receipt, the member will be entitled to delivery of the underlying shares. NSCC's service will provide members with the ability to utilize existing Continuous-Net-Settlement ("CNS") and Balance Order Systems to deliver the shares to the trustee, which will also be a member of NSCC, to receive an index receipt upon creation, and to deliver the index receipt and receive the shares upon redemption. Processing of these transactions will occur within the normal five (5) day settlement time frame.

Each day the trustee will provide NSCC with data listing the underlying shares and their associated quantities of index receipts which will be created or redeemed on the next business day. The trustee also will provide data concerning an estimated cash amount which is calculated by the trustee and which includes an accrued dividend amount and a balancing amount. The

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[6] 15 U.S.C. 78o-3 (1988).

[7] 17 CFR 200.30-3(a)(12)(1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See Securities Exchange Act Release No. 31039 (August 13, 1992), 57 FR 37851 [File No. SR-AMEX-92-18] (notice of filing of the AMEX's proposed rule change).

[3] This creation follows the placement of an order between the member and the distributor for the trust independent of NSCC's operations.

trustee may also provide other financial data.

Each business day will be a creation/redemption day. On creation/redemption day (referenced as "T"), the trustee, on behalf of each member who created or redeemed the index receipts, will report to NSCC the quantity of index receipts created and redeemed. The trustee also will report the final cash amount and a transaction amount which represents the trustee's transaction fee.

On T+1, NSCC will report the details of creation/redemption instructions to each member on the Index Receipt Detail Report. Using the data supplied on the previous day, NSCC will report the quantity of the underlying securities that will be required to be delivered/received on settlement day for netted instructions. The report also will indicate the quantity of index receipts to be received or delivered on settlement day.[4] The report will further indicate the final cash amount and the transaction fee which will be debited and credited on settlement day.

Settlement of the index receipt and depository eligible component shares will be processed in the CNS System. Settlement of non-depository eligible securities will be processed in the Balance Order System. NSCC will guarantee settlement of the shares to the same extent it guarantees the settlement of other CNS and non-CNS eligible securities. NSCC also will guarantee payment of the cash amount but not the transaction fee.

(b) The proposed rule change is consistent with the purpose of section 17A of the Act [5] because it promotes the prompt and accurate clearance and settlement of securities transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

[4] The value of one index receipt will equal the sum of the value of the component shares (or fractions thereof). The AMEX's PDRs require the exchange of multiple index receipts for component shares which always will be in multiples of whole shares. Thus, no delivery of fractional shares will occur.

[5] 15 U.S.C. 78q-1 (1988).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** on within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NSCC-92-08 and should be submitted by November 12, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-25467 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

October 15, 1992

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Consolidated Edison Co. of New York, Inc.
4.65% Cum. Pfd., Ser. C, $100.00 Par Value (File No. 7-9301)

Consolidated Edison Co. of New York, Inc.
6% Cum. Pfd., Ser. B, $100.00 Par Value (File No. 7-9302)

Consumers Power Co.
$4.16 Pfd., $100.00 Par Value (File No. 7-9303)

Consumers Power Co.
$4.50 Pfd. $100.00 Par Value (File No. 7-9304)

Consumers Power Co.
$7.45 Pfd. Cum. $100.00 Par Value (File No. 7-9305)

Consumers Power Co.
$7.72 Pfd. $100.00 Par Value (File No. 7-9306)

Consumers Power Co.
$7.76 Pfd. Cum. $100.00 Par Value (File No. 7-9307)

Consumers Power Co.
$7.68 Pfd. $100.00 Par Value (File No. 7-9308)

Continental Bank Corp.
Adj. Rte. Pfd., Ser. 1, No Par Value (File No. 7-9309)

CRSS, Inc.
Common Stock, $1.00 Par Value (File No. 7-9310)

CSX Corp.
$7.00 Cum. Conv. Pfd., Ser. A, No Par Value (File No. 7-9311)

CUC International, Inc.
Common Stock, $.01 Par Value (File No. 7-9312)

Cummins Engine Co., Inc.
$3.50 Dep. Conv. Exch. Pfd. Shs., Ser. A, No Par Value (File No. 7-9313)

CV Reit, Inc.
Common Stock, $.01 Par Value (File No. 7-9314)

AMEV Securities, Inc.
Common Stock, $.01 Par Value (File No. 7-9315)

Bunker Hills Income Securities, Inc.
Common Stock, $1.00 Par Value (File No. 7-9316)

CCX, Inc.
5% Cum. Pfd. Stock. $25.00 Par Value (File No. 7-9317)

Central Illinois Light
4½% Cum. Pfd. $100.00 Par Value (File No. 7-9318)

Chris-Craft-Industries
$1.00 Prior Pfd., No Par Value (File No. 7-9319)

Chris-Craft-Industries
$1.40 Cum. Conv. (40) Vtg., $1.00 Par Value (File No. 7-9320)

Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-9321)

These securities are listed and registered on one or more other national securities exchange and are reported in

the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-25470 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

October 15, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

BankAmerica Corp.
Depositary Shares (Rep. 1/20 share of 8.16% Cum. Pfd., Series L) (File No. 7-9287)
Citizens 1st Bancorp
Common Stock, No Par Value (File No. 7-9288)
City National Corp.
Common Stock, $1.00 Par Value (File No. 7-9289)
Gabelli Equity Trust, Inc.
Rights expired 10-21-92 (File No. 7-9290)
Horn & Hardart Co.
Rights expired 9-16-92 (File No. 7-9291)
Hovnanian Enterprises
Class A Common Stock, $.01 Par Value (File No. 7-9292)
Indresco, Inc.
Common Stock, $.25 Par Value (File No. 7-9293)
John Alden Financial Corp.
Common Stock, $.01 Par Value (File No. 7-9294)
Mark IV Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-9295)
Nutmeg Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-9296)
Rexene Corp.
Common Stock, $.01 Par Value (File No. 7-9297)
Samuel Goldwyn Company
Common Stock, $.01 Par Value (File No. 7-9298)
USX-Delhi Group
Common Stock, $1.00 Par Value (File No. 7-9299)
Washington Energy Co.
Common Stock, $5.00 Par Value (File No. 7-9300)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 5, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-25468 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

October 15, 1992

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(b) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Banco Latinamericano De Exportaciones S.A.
Class E Common Stock, No Par value (File No. 7-9273)
Bowmar Instrument Corporation
$3.00 Sr. Voting Cum. Conv. Pfd Stock, $1.00 Par Value (File No. 7-9273)
ARMCO, Inc.
$3.625 Cum. Cv. Pfd Stock Class A, No Par Value (File No. 7-9274)
Surgical Care Affiliates, Inc.
Common Stock, $.25 Par Value (File No. 7-9275)
National Semiconductor Corporation
Depositary Shares (File No. 7-9276)
Mid America Bancorp.
Common Stock, No Par Value (File No. 7-9277)
National Healthcorp L.P.
Units of Beneficial Interest, No Par Value (File No. 7-9278)
PLM Equipment Growth Fund III
Depositary Units of Limited Partnership, No Par Value (File No.7-9279)
First City Bancorp., Inc.
Common Stock, No Par Value (File No. 7-9280)
Boddie Noel Restaurant Properties, Inc.
Common Stock, $0.01 Par Value (File No. 7-9281)
Enterprise Oil Plc
American Depositary Shares Series B (File No. 7-9282)
Carter Hawley Hale Stores, Inc.
Warrants Expiring 1999, When Issued (File No. 7-9283)
Brilliance China Automative Holding Ltd
Common Stock, $.01 Par Value (File No. 7-9284)
Magna International, Inc.
Class A Subordinate Voting Shares, No Par Value (File No. 7-9285)
Elcor Corporation
Common Stock, $1 Par Value (File No. 7-9286

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.Interest persons are invited to submit on or before November 5, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-25469 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19030; 812-7738]

## Bando McGlocklin Capital Corporation et al.; Application

October 15, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** Bando McGlocklin Capital Corporation ("Parent"); Bando McGlocklin Small Business Investment Corporation ("Subsidiary").

**RELEVANT 1940 ACT SECTIONS:** Order requested under sections 6(c) and 17(b) for an exemption from sections 8(b), 12(d), 17(a), 18(a), 18(c), 30(a), 30(b) and 30(d) and rules 8b–16, 30a–1, 30b1–1 and 30d–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting Parent to establish and operate Subsidiary as a wholly-owned subsidiary under the terms of a proposed reorganization in which Parent will transfer certain assets, including its small business investment company license, to Subsidiary in exchange for all of the common stock of Subsidiary and the assumption by Subsidiary of certain liabilities of Parent.

**FILING DATE:** The application was filed on June 17, 1991 and amended on February 10, 1992, June 10, 1992, and October 5, 1992. Counsel for the applicants has represented by letter dated October 15, 1992, that another amendment, the substance of which is incorporated herein, will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 13555 Bishops Court, Brookfield, Wisconsin 53005.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Special Counsel, at (202) 504–2259, or Barry D. Miller, Senior Special Counsel, at (202) 504–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Parent was incorporated under the laws of the State of Wisconsin in February, 1980. Parent is a diversified closed-end registered investment company licensed to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("1958 Act"). Parent provides long-term, primarily variable rate, secured loans to finance the growth, expansion and modernization of small businesses. As of June 30, 1992, Parent had total assets of $90,436,481, and had 2,746,895 shares of common stock outstanding. Subsidiary was incorporated under the laws of the State of Wisconsin on June 6, 1991 at the direction of Parent and, except for organizational matters, has not yet commenced operations.

2. Parent will apply for approval from the Small Business Administration (the "SBA") to transfer its SBIC license to Subsidiary pursuant to a plan of reorganization (the "Reorganization") under section 351 of the Internal Revenue Code (the "Code") under which (a) at least 75% (measured by value) of the assets of Parent would be transferred to Subsidiary; (b) at least 75% of the liabilities of Parent would be assumed by Subsidiary; (c) all of the issued and outstanding shares of Subsidiary's common stock would be issued to Parent; and (d) Parent would become a holding company owning Subsidiary as its wholly-owned Subsidiary. Parent will solicit the consent of its institutional lenders to the assumption by Subsidiary of Parent's liabilities to them. Parent will also solicit proxies from its shareholders to approve the Reorganization. In connection with the Reorganization, Subsidiary will file a Notification of Registration on Form N–8A and a Registration Statement on Form N–5 under the 1940 Act. Assuming approval of the Reorganization by the SBA, Parent's institutional lenders, and Parent's shareholders, Parent and Subsidiary will effect the Reorganization. Following the Reorganization, Parent and Subsidiary will both be regulated investment companies under Subchapter M of the Code.

3. In addition to being a holding company, after the Reorganization Parent intends to make long-term, primarily variable rate, secured loans to small business concerns. These loans do not qualify as permitted investments by an SBIC. Initially the loans originated by Parent would be pursuant to the SBA's 504 Program.[1] Section 504 of the Small Business Investment Act authorizes the SBA to guarantee debentures issued by qualified state or local development companies, the proceeds of which are used to finance loans to small business concerns in an amount not to exceed 50% of the cost of the projects with respect to which the loans are made. The objective of the 504 Program is to achieve community economic development through job creation and retention by providing long-term fixed asset financing to small business concerns. Such small business concerns must demonstrate that the project to be financed will have a significant economic impact on the community in which it is located, presumably through job creation or retention. Loans originated pursuant to the SBA's 504 Program typically involve fixed asset financing in which 10% of the total funds for the project are provided by the small business, 40% by the SBA in the form of debentures guaranteed by the U.S. Treasury, and 50% by a third party financier. Parent would provide the private financing and have a first lien or the project. (SBICs are not permitted to provide the private financing under the 504 Program.) The SBA would have a second lien on the project. In all other respects the loans would be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

4. In the future Parent might also make loans pursuant to the SBA's 7(a) Program.[2] Section 7(a) of the Small Business Act authorizes qualified lenders to make loans to small business concerns that are guaranteed by the SBA to the extent of 75% to 85% of the loan, depending upon the circumstances. SBICs are not permitted to participate in the SBA's 7(a) Program. Qualified lenders must be subject to continuing

[1] The SBA's 504 Program is authorized by section 504 of the Small Business Investment Act (15 U.S.C. 697a).

[2] The 7(a) Program is authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Regulations implementing the 7(a) Program are located in 13 CFR part 120.

supervision and examination by a state or federal regulatory authority. Parent is not currently subject to such continuing supervision and examination but may in the future apply to the Office of the Commissioner of Banking of the State of Wisconsin to be so supervised. The objective of the 7(a) Program is to provide funds to small business concerns (i) to finance construction, conversion, or expansion; (ii) to purchase equipment, facilities, machinery, supplies or materials; and (iii) to obtain working capital. Loans made by Parent pursuant to the 7(a) Program would be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

5. Parent's lending activities may be financed by (i) the assets initially retained by Parent in the Reorganization; (ii) borrowings permitted under section 18 of the 1940 Act; and (iii) the proceeds from offerings of shares of its common stock following the Reorganization. Parent and Subsidiary will have identical investment objectives and fundamental investment policies. All of the directors of Subsidiary will also be directors of Parent.

6. Parent presently contemplates that it may from time to time make additional investments in Subsidiary either as a contribution to capital, purchases of additional stock, or, subject to the prior approval of the SBA, loans. Parent and Subsidiary might also, subject to the prior approval of the SBA, from time to time purchase all or a portion of portfolio investments held by the other in order to enhance the liquidity of the selling company or for other reasons.

7. As indicated in the preceding paragraph, any loans made by Parent to Subsidiary would require the prior approval of the SBA, as would any purchases or sales of portfolio securities between Parent and Subsidiary. After the Reorganization, Subsidiary will have outstanding debt securities that are guaranteed by the SBA, but Parent will not. Thus, while these transactions would have no adverse economic effect on Parent's shareholders, they could have an adverse economic effect on the SBA. "Self-dealing" transactions that are detrimental to the SBA are prohibited by 13 CFR 107.903(a). However, 13 CFR 107.903(g) provides that an SBIC that is registered under the 1940 Act and that has been granted an exemption by the SEC with regard to a self-dealing transaction is exempted from this prohibition. Arguably, this provision would be applicable if the application is approved by the Commission. Consequently, applicants have agreed as a condition to any order of the Commission that the SBA must approve each of these types of transactions.

8. Parent intends to file with the Commission on behalf of itself and Subsidiary annual reports and amendments to its registration statement on a consolidated basis only in lieu of and in satisfaction of the separate filing and reporting obligations of Parent and Subsidiary.

9. Borrowings by Subsidiary after the Reorganization would include debentures issued to, or guaranteed by, the SBA ("SBA Debentures"). Subsidiary will assume in the Reorganization the obligation of Parent with respect to any of Parent's then outstanding SBA Debentures. Certain of Parent's SBA Debentures were issued on or before April 7, 1986 and are held by the Federal Financing Bank, and instrumentality of the United States under the general supervision of the Secretary of the Treasury. Other SBA Debentures of Parent were issued after April 7, 1986 and are held by a pool, which is treated as a grantor trust for tax purposes. Initially, any SBA Debentures issued by Subsidiary would be held by such a pool. However, the SBA has the authority to hold SBA Debentures rather than guarantee SBA Debentures held by others.

**Applicants' Legal Analysis**

1. After the Reorganization, Parent may make loans or advances to Subsidiary, or additional purchases of Subsidiary's common stock. These transactions might be considered acquisitions or issuances of securities prohibited by section 12(d). Accordingly, applicants request an exemption from the provisions of section 12(d) to the extent necessary to permit (i) future acquisitions by Parent of any common stock issued by Subsidiary and (ii) the acquisition from time to time by Parent of securities of Subsidiary representing indebtedness, if the prior approval of the SBA is obtained.

2. Prior to and after the Reorganization, Parent will be an affiliated person of Subsidiary and Subsidiary will be an affiliated person of Parent, as defined in section 2(a)(3) of the 1940 Act. The Reorganization might be deemed to violate section 17(a) of the 1940 Act since it involves the sale of securities or other property by Parent to Subsidiary. Following the Reorganization, it is the position of applicants that additional investments in Subsidiary by Parent in the form of stock purchases, capital contributions, or loans do not violate section 17(a) since the seller (Subsidiary) would be the issuer of any securities issued and is controlled by the purchaser (Parent). In addition, the guarantee by Parent of any of Subsidiary's indebtedness would not violate section 17(a)(3) since Parent controls Subsidiary. However, purchases and sales of portfolio securities between applicants would appear to be violations of section 17(a)(1) and 17(a)(2). Accordingly, applicants request an exemption from the provisions of section 17(a) to the extent necessary to permit (i) the Reorganization and (ii) purchases and sales of portfolio securities between applicants, if the prior approval of the SBA is obtained.

3. Parent and Subsidiary are subject to the asset coverage requirements of section 18(a). However, section 18(k) provides an exemption from sections 18(a)(1) (A) and (B) for SBICs, which will apply to Subsidiary. It is arguable that Parent will have to comply with the asset coverage requirements of section 18(a) on a consolidated basis. This will mean that Parent will have to treat as its own all assets of Parent and Subsidiary (with the value of Parent's investment in Subsidiary eliminated) and will also treat as its own all liabilities of Subsidiary (with intercompany receivables and liabilities eliminated). As a result, Parent could be in violation of the asset coverage provisions of section 18(a) absent an order of the Commission. Similarly, Parent would be in violation of section 18(c) as Subsidiary has more than one class of senior security representing indebtedness outstanding.[3] Accordingly, applicants request an exemption from the provisions of section 18(a) to the extent necessary to treat borrowings by Subsidiary as "liabilities and indebtedness not represented by senior securities" within the meaning of section 18(h) in applying the asset coverage requirements of section 18(a) to Parent and Subsidiary on a consolidated basis. Parent requests an exemption from the provisions of section 18(c) because, on a consolidated basis, it could be deemed to have more than one class of senior security representing indebtedness because of the inclusion of indebtedness of Subsidiary.

4. In the absence of an order of the Commission each of Parent and Subsidiary would be required to file annual amendments to their registration

[3] Subsidiary will qualify for the exemption from section 18(c) contained in rules 18c-1 and 18c-2.

statements and transmit to shareholders annual and semi-annual reports and each of Parent and Subsidiary would be required to file semi-annual reports on Form N–SAR pursuant to sections 8(b), 30(a), 30(b), and 30(d) and rules 8b-16, 30a-1, 30b1-1, and 30d-1. Such separate filings and reports would be burdensome to Parent and unlikely to provide a convenient source of information to investors. Accordingly, applicants request an exemption from the foregoing provisions (i) to permit Parent to file on behalf of itself and Subsidiary amendments to its registration statement containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, (ii) to file on behalf of itself and Subsidiary semi-annual reports on Form N-SAR, containing information with respect to Parent and Subsidiary on a consolidated basis only, and (iii) to permit Parent to transmit to its shareholders semi-annually reports containing the financial information and statements as required for Parent and Subsidiary on a consolidated basis only, except as otherwise provided in condition 6 (set forth below).

**Applicants' Legal Conclusions**

1. The creation of a holding company structure is intended to permit Parent to engage in an expanded scope of operations beyond that which is available to it as an SBIC. Parent and Subsidiary will be investment companies and each will thus be engaged in operations permitted by the 1940 Act and subject to the provisions thereof. Because Parent and Subsidiary will have the same fundamental investment policies and Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary, the Reorganization will not result in overreaching or in any person receiving an advantage to the detriment of any other party. Moreover, since Subsidiary will be a wholly-owned Subsidiary of Parent, any activity carried on by it will in all material respects have the same economic effect and substance vis-a-vis Parent's shareholders as if done directly by Parent. The foregoing exemptions will have no material adverse financial or economic impact on the public shareholders because Subsidiary will be a wholly-owned Subsidiary of Parent. Since Parent and Subsidiary will conduct their operations as though they comprise one company, the participation of one will not be on a basis different from or less advantageous than the other.

2. Since Subsidiary will be a wholly-owned subsidiary of Parent and Parent has represented that it will exercise its rights as a shareholder of Subsidiary only as directed by Parent's shareholders, the relationship of Parent's shareholders to the SBIC activities to be carried out by Subsidiary will be no different than if carried out by Parent. Accordingly, the objectives of section 12 will not be compromised and the public interest will not be harmed by the Reorganization, future acquisitions by Parent of securities issued by Subsidiary, or the acquisition form time to time by Parent of evidences of indebtedness issued by Subsidiary.

3. With respect to the exemption from section 17(a), since Subsidiary will be a wholly-owned Subsidiary of Parent and since no officers or directors of Subsidiary or Parent or any controlling persons of Parent will have any financial interest in the Reorganization or purchases and sales of portfolio securities between Parent and Subsidiary, there can be no overreaching on the part of any persons and no harm to the public interest will occur in those transactions.

4. With respect to the exceptions from sections 18(a) and 18(c), the net effect of the application of the asset coverage and single class of indebtedness limitations on a consolidated basis as to Parent and Subsidiary following the Reorganization, if relief were not obtained, could be to restrict the ability of Subsidiary to obtain the kind of financing that has heretofore been available to Parent. Accordingly, no harm to the public interest will occur if the Section 18(a) exemption is obtained.

5. With respect to the exemptions from sections 8(b), 30(a), 30(b), and 30(d) and rules 8b–16, 30a–1, 30b1–1 and 30d–1, single filings by Parent would provide the Commission and the investing public with adequate information concerning Parent and Subsidiary in a more meaningful form than separate filings by Parent and Subsidiary and would be consistent with the filings made by other public companies. Accordingly, no harm to the public interest will occur if these exceptions are granted.

**Applicants' Conditions**

Applicants represent to the Commission that, as a condition to the granting of the exemptive relief sought by this application, they will comply with the following:

1. Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary.

2. Subsidiary will have the same fundamental investment policies as Parent, as set forth in Parent's registration statement; Subsidiary will not engage in any of the activities described in section 13(a) of the 1940 Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Parent.

3. No person shall serve or act as investment adviser to Subsidiary under circumstances subject to Section 15 of the 1940 Act, unless the directors and shareholders of Parent shall have taken the action with respect thereto also required to be taken by the directors and shareholders of Subsidiary.

4. No person shall serve as a director of Subsidiary who shall not have been elected as a director of Parent at its most recent annual meeting, as contemplated by section 16(a) of the 1940 Act and subject to the provisions thereof relating to the filling of vacancies. Notwithstanding the foregoing, the board of directors of Subsidiary will be elected by Parent as the sole shareholder of Subsidiary.

5. Parent will not itself issue, and Parent will not cause or permit Subsidiary to issue, any senior security or sell any senior security of which Parent or Subsidiary is the issuer except as hereinafter set forth: Parent and Subsidiary may issue and sell to banks, insurance companies and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, and Subsidiary may issue debt securities held or guaranteed by the SBA, provided the following conditions are met: (i) Such notes or evidences of indebtedness are not intended to be publicly distributed, (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security, and (iii) immediately after the issuance or sale of any such notes or evidences of indebtedness by either Parent or Subsidiary, Parent and Subsidiary on a consolidated basis, and Parent individually, shall have the asset coverage required by section 18(a), except that, in determining whether Parent and Subsidiary, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by Subsidiary, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities. Any guarantee of Subsidiary's borrowings by Parent shall be deemed a senior security for purposes of the calculation of Parent's asset coverage.

6. Parent will file with the Commission pursuant to rule 8b–16 amendments to its registration statement pursuant to section 8(b) of the 1940 Act on behalf of itself and Subsidiary containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, such amendments to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to rule 8b–16. Parent will file with the Commission pursuant to sections 30(a) and 30(b) of the 1940 Act and rules 30a–1 and 30b1–1 thereunder semi-annual reports on Form N–SAR, or appropriate successor form, on behalf of itself and Subsidiary containing information with respect to Parent and Subsidiary on a consolidated basis only, such consolidated semi-annual reports to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to section 30(a) and 30(b) and rules 30a–1 and 30b1–1. Parent will in response to the appropriate item of Form N–SAR or appropriate successor form indicate that the report is being filed on behalf of Subsidiary and the "811" number of Subsidiary. Parent will transmit to its shareholders semi-annually pursuant to section 30(d) of the 1940 Act and rule 30d–1 thereunder reports containing the financial information and statements prescribed and required by such section and rule for Parent and Subsidiary on a consolidated basis only, which reports shall be in lieu of and in satisfaction of the separate reporting obligations of Parent and Subsidiary pursuant to section 30(d) and rule 30d–1; provided, however, that if 10% or more of Parent's total assets on a consolidated basis are invested in assets other than securities issued by Subsidiary then, in addition to the consolidated financial statements of Parent and Subsidiary, there shall be included in such reports separate financial statements of Subsidiary. Notwithstanding anything in this condition, Parent shall not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statement of Subsidiary required by Rule 6–03(e) of Regulation S–X. The selection of any independent public accountant who sighs a consolidated financial statement filed by Parent and Subsidiary with the Commission shall be ratified in accordance with section 32(a)(2) of the 1940 Act by a majority of the outstanding voting securities (as defined in section 2(a)(42) of the 1940 Act) of Parent.

7. Parent will acquire securities of Subsidiary representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. Parent and Subsidiary will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25519 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19016; 811–5934]**

## Connecticut Tax-Free Income Portfolio; Application

October 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Connecticut Tax-Free Income Portfolio.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 23, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant, a New York trust, is an open-end, diversified management investment company. On October 11, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement on Form N–1A pursuant to section 8(b) of the Act. Applicant never registered its securities pursuant to the Securities Act of 1933.

2. Applicant was organized as one of ten hub funds in a hub and spoke arrangement with Yankee Funds. Yankee Funds is a registered management investment company with ten series, each of which is a spoke fund to one of the ten hub funds. On October 22, 1991, Yankee Funds was notified that its principal record owners, Fleet Bank of Massachussets N.A. and Fleet Bank N.A., acting in their capacity as trustees for various fiduciary accounts, intended to redeem their interests and effectively liquidate Yankee Funds, and because Yankee Funds owned substantially all of applicant's shares, effectively liquidate applicant.

3. Applicant requested bids from three different brokers for the securities held on January 31, 1992, and accepted the highest bids tendered on February 3, 1992 for settlement on February 6, 1992. On February 7, 1992, applicant distributed $7,001,024 to its beneficial owners on a *pro rata* basis.

4. In connection with the liquidation, applicant expects to incur expenses consisting of professional fees, custodial and transfer agency fees, and certain other minor expenses totaling $13,875. Applicant has retained cash totaling $44,090 which will be used to pay liquidation expenses, and normal operating expenses incurred up to the date of liquidation. If any cash remains after paying all expenses, a distribution of all remaining cash will be made to the beneficial owners of applicant on a *pro rata* basis. The unamortized organizational expenses of applicant as of October 21, 1991, totaling $10,300, were borne by Fleet Bank of Massachusetts, N.A., applicant's investment adviser, and Fleet Bank N.A.

5. Applicant has debts and liabilities consisting of termination expenses and legal and audit fees associated with applicant's normal operating expenses incurred up to the date of liquidation. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any

business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-25460 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-19027; 812-7612]**

## Delaware Group Trend Fund, Inc., et al.;

October 15, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for exemption under the Investment Company Act of 1940 ("1940 Act").

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**APPLICANTS:** Delaware Group Trend Fund, Inc., Delaware Group Decatur Fund, Inc., Delaware Group Delaware Fund, Inc., Delaware Group DelCap Fund, Inc., Delaware Group Value Fund, Inc., Delaware Group Premium Fund, Inc., Delaware Group Global & International Funds, Inc., and Delaware Pooled Trust, Inc. (the "Funds"); Delaware Management Company, Inc. ("DMC"); Delaware International Advisers Ltd. ("Delaware International"); and Delaware Distributors, Inc. ("DDI").

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 6(c) from sections 18(f), 18(g) and 18(i) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order of exemption from the provisions of sections 18(f) 18(g) and 18(i) of the 1940 Act to the extent necessary to permit them to implement a multiple class distribution system with two classes of shares as described below (the "Multiple Class System").

**FILING DATES:** The application was filed on October 12, 1990, and amendments to the application were filed on February 11, April 6, and October 2, 1992. Counsel, on behalf of Applicants, has agreed to file a further amendment during the notice period to make a change to condition 4 to the application, which change is incorporated herein.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 6, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Commerce Square, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch. **Applicants' Representations**

1. Each of the Funds is an investment company registered as an open-end management company under the 1940 Act. As used herein the term "Funds" also refers to any series of the Funds, or any future investment companies, or series thereof, for which DMC (or any entities controlled by or under common control with DMC) or Delaware International (or any entities controlled by or under common control with Delaware Interational) serves in an advisory capacity or for which DDI (or any entities controlled by or under common control with DDI) acts as national distributor. The remaining Applicants, DMC, Delaware International, and DDI, are investment advisers or the national distributor for the Funds.

2. Most of the named Applicants and certain related entities received an exemptive order from the SEC on April 10, 1987 (the "1987 Order"), pursuant to section 6(c) of the 1940 Act, exempting them from the provisions of sections 18(f), 18(g) and 18(i) to the extent that the issuance and sale of classes of securities representing interests in the investment portfolio of an investment company applicant for that order might be deemed: (i) To result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18 (f)(1) of the 1940 Act; or (ii) to violate the requirement in section 18 (i) of the 1940 Act that every share of stock issued by a registered management investment company have equal voting rights with every other outstanding voting share.

3. The 1987 Order provided that a fund would issue its shares in classes "only when such [fund] declares a daily dividend and also accrues its 12b-1 payments daily." This commitment, and others imposed by the 1987 Order, were intended to assure that "the net asset value per share for all [s]hares will remain the same." At the time that relief was sought, applicants in that matter believed that investors would not readily be receptive to the issuance of classes of shares of a fund that did not continuously reflect the same net asset value per share as each other share of such fund. To limit the extent of shareholder education required to implement the "classes" concept in the Delaware Group, applicants believed it desirable to conform to the limitations cited above.

4. Several of the daily dividend funds in the Delaware Group have since issued more than one class, each of which declares a daily dividend as required by the 1987 Order. Applicants find that the use of this program has been well received by investors, has involved minimal administrative burdens or operational effects for the funds involved, and has benefitted all of the shareholders of the participating funds by virtue of the additional economies of scale achieved by each participating fund.

5. Applicants believe they have developed the expertise, based upon their experience operating the classes program for the daily dividend funds, to being operation of such a program for non-daily dividend funds. The current application requests that the SEC issue an order relating solely to funds that do not declare a daily dividend so that Applicants could expand the classes system to the Funds, which do not declare a daily dividend. Applicants note, however, that the specific representations and conditions to the 1987 Order are not modified, and Applicants intend to continue to operate in accordance with the 1987 Order with respect to the daily dividend funds.

6. Applicants propose to issue two classes of shares for the non-daily dividend Funds, Class A and Class B. Class A shares, to be marketed primarily to retail investors, would have a mid-level sales load and a low Rule 12b-1 fee. Class B shares, to be marketed primarily to institutional investors, would be sold without a sales load or a Rule 12b-1 fee. The institutions to whom Class B shares will be offered include: (a) Defined contribution retirement plans with 1,000 or more eligible employees; (b) tax-exempt employee benefit plans of DMC or its

affiliates and securities dealer firms with a selling agreement with DDI; and (c) institutional advisory accounts of DMC or its affiliates and those having client relationships with Delaware Investment Advisers, a division of DMC, or its affiliates and their corporate sponsors, as well as subsidiaries and related employee benefit plans.

7. The only differences between Class A shares and Class B shares of the same Fund will relate solely to: (i) The impact of the Rule 12b–1 Plan distribution fee payments made by Class A shares of the Fund and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (ii) voting rights on matters pertaining to Rule 12b–1 distribution plans; (iii) the different exchange privileges of the classes of shares to be described in the Funds' prospectuses and statements of additional information; and (iv) the designation of each class of shares of a Fund. In addition, Applicants have filed a separate application for an exemptive order to permit them to impose a contingent deferred sales charge on redemptions of class A shares under certain limited circumstances.[1]

8. The Rule 12b–1 Plan associated with the Class A shares of each non-daily dividend Fund currently offering such shares, and contemplating the creation of Class B shares, will have its own budget funded solely from the assets of Class A. Further, each non-daily dividend Fund to be created in the future that will offer its shares as part of the Multiple Class System will adopt a rule 12b–1 Plan that will be subject to the separate approval of the Class A shareholders, and will have its own budget funded solely from the assets of Class A. It is anticipated that the Rule 12b–1 Plans associated with all Class A shares will provide for a fee that will not exceed 30 basis points and, in any event, will comply with the recently approved NASD rule change concerning asset-based sales charge limitations.

9. It is expected that, under the Distribution Plans relating to the Class A shares, DDI will be paid a certain fee for furnishing, or causing or encouraging others (such as registered broker-dealers pursuant to Dealer's Agreements) to furnish, services and incentives in connection with the promotion, offering and sale of Class A shares and, where suitable and appropriate, the retention of Class A shares. It is also expected that the Plans will provide that a Fund may enter into certain Shareholder Service Agreements with non-broker-dealers pursuant to which such entities will provide shareholder servicing functions to their customers. The services to be provided pursuant to such Shareholder Service Agreements will include confirming that customers have received the prospectus and statement of additional information, assisting such customers in maintaining proper records with the Fund, answering inquiries concerning the Fund or the status of a customer's account, and providing information to customers relating to maintaining their investment in the Funds.

10. With respect to exchanges, Class A shareholders, as a general matter, will not be permitted to exchange into Class B, because such investors do not meet the eligibility requirements for investing in Class B. To the extent that the status of such Class A shareholders change so that they did meet the eligibility requirements, such shareholders would be permitted to exchange their shares for Class B shares.

11. Each share in each class would bear, *pro rata*, on the basis of the relative net assets represented buy such share, all of the normal expenses of the Fund except that Class A shares, and only Class A shares, would bear the expense of the Rule 12b–1 Plan attributable to that class. As a result, the aggregate expenses attributable to each Class A share will be higher than those attributable to Class B shares that are not offered in connection with such a Rule 12b–1 Plan.

### Applicants' Legal Analysis

1. Applicants request an exemptive order, pursuant to section 6(c) of the 1940 Act, to the extent that the proposed issuance and sale of two different classes of shares representing interests in the non-daily dividend Funds, including the allocation of voting rights thereto and the payment of dividends thereon as described above and in the application, might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act and thus be prohibited by section 18(f)(1) of the 1940 Act; and (b) to violate the equal voting provisions of section 18(i) of the 1940 Act.

2. Applicants believe that the issuance and sale of different classes of shares will better enable the Funds to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Funds to both facilitate the distribution of their securities and expand the scope and depth of their services without assuming excessive accounting and bookkeeping costs or unnecessary risks. Under the proposed system, owners of different classes of shares within a Fund may be relieved of a portion of the fixed costs normally associated with open-end management investment companies since such costs would be spread over a greater number of shares than they would be otherwise. Similarly, owners of different classes of shares in Funds with advisory and administrative agreements under which the fee rates decrease as the net assets of the particular Fund increase could expect to enjoy lower effective management fee rates than if the arrangement were not implemented.

3. Applicants also believe that the allocation of expenses and voting rights relating to Plans in the manner described for the Multiple Class System is equitable and would not discriminate against any group of shareholders. Investors purchasing Class A shares offered in connection with a rule 12b–1 Plan and receiving the services provided thereunder would bear the costs associated with such services, but also would enjoy exclusive shareholder voting rights with respect to matters affecting such Plan. Conversely, investors purchasing Class B shares, that are not covered by such 12b–1 Plan, would not incur such expenses or enjoy such voting rights. Moreover, because, with respect to any Fund, the rights and privileges of all shares would be substantially identical, the possibility that their interests would ever conflict would be remote.

4. All shares in the Fund would bear, *pro rata*, all of the normal expenses of the Fund, except that each class of shares offered in connection with a Plan would bear the expenses of the 12b–1 Plan payments thereunder. As a result, the aggregate expenses attributable to each Class A share will be higher than those attributable to Class B shares of the same Fund. By allowing the Funds to create different classes of shares, however, and to allocate the expenses of 12b–1 payments as proposed, the Fund will save the organizational and other continuing costs that would be incurred if the Funds were required to establish a new separate investment series for each different class of shares.

5. The abuses that section 18 of the 1940 Act were intended to redress were set forth in section 1 of the 1940 Act which declares "that the national public and the interest of investors are adversely affected * * * (7) when investment companies by * * * the issuance of excessive amounts of senior securities increase unduly the

[1] See Delaware Group Tax-Free Money Fund, Inc., *et al.* (File No. 812–7943).

speculative character of their junior securities; or (8) when investment companies operate without adequate assets or reserves." The Multiple Class System for the non-daily dividend Funds does not involve borrowings and does not affect the integrity of the Funds' existing assets and reserves, or the interest of existing shareholders. The proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in all of the Fund's income and all of the Fund's expenses (with the exception of the proposed Rule 12b–1 Plan expenses payable by a class approving a Plan).

**Applicants' Conditions**

Applicants agree that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares Funds will represent interests in the same portfolios of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares will relate solely to: (a) The impact of the disproportionate payments made under the Rule 12b–1 distribution Plan by Class A shares of the Fund and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) voting rights on matters which pertain to rule 12b–1 distribution Plans, (c) the different exchange privileges, if any, of different classes as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, and (d) the designation of each class of shares of a Fund.

2. The Directors of the Funds, including a majority of the independent Directors, will approve the Multiple Class System. The minutes of the meetings of the Directors of the Funds regarding the deliberations of the Directors with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the reasons for the Directors' determination that the proposed Multiple Class system is in the best interests of both the Funds and their shareholders.

3. On an ongoing basis, the Directors of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. As relevant, DMC, Delaware International and DDI (or any entity controlled by or under common control with DMC, Delaware International or DDI serving as investment manager or national distributor to a Fund) will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, as relevant, DMC, Delaware International and DDI (or any entity controlled by or under common control with DMC, Delaware International or DDI serving as investment manager or national distributor to a Fund) at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. If still required by the SEC, such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. In evaluating a Rule 12b–1 Plan and its related agreements, including Shareholder Service Agreements, the Directors will specifically consider whether (a) the rule 12b–1 Plan, including the provisions relating to shareholder servicing, is in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the rule 12b–1 Plan are required for the operation of the applicable classes, (c) the service organizations can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Shareholder Service Agreement entered into pursuant to the rule 12b–1 Plan will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customers' assets in the Fund (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each Shareholder Service Agreement entered into pursuant to the rule 12b–1 Plan will provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

8. The Directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(iii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors to justify and fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

9. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that distribution and shareholder service payments relating to Class A shares will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert") who has rendered a report to Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to provide, will be available for inspection by the SEC staff upon the written request to the

Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time and time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

12. The prospectuses of the Funds will contain a statement to the effect that a sales person and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Directors.

15. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of the Funds' net asset value or public offering price will present each class of shares separately.

16. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their respective Rule 12b-1 Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-25516 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-19019; 811-5294]**

## Dreyfus Strategic World Revenues, L.P.; Deregistration

October 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Dreyfus Strategic World Revenues, L.P.

**RELEVANT ACT SECTIONS:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 11, 1992, and a supplemental letter was submitted on October 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556-0144.

**FOR FURTHER INFORMATION CONTACT:** John V. O'Hanlon, Staff Attorney, at (202) 272-3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Applicant is an open-end non-diversified investment company organized as a limited partnership under Delaware law. On August 21, 1987, applicant filed a Notification of Registration pursuant to section 8(a) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act, which was declared effective on September 27, 1987. The public offering of applicant's shares commenced on October 26, 1987.

2. On June 12, 1992, applicant's Managing General Partners determined that, because applicant had not maintained a sufficient amount of assets for satisfactory investment operations, and continued operations would result in high expense ratios relative to asset size, it was advisable and in the best interest of applicant and its limited partners that applicant be dissolved and the proceeds from the liquidation of shares of limited partnership interests be distributed to the recordholders of such shares. Accordingly, the Managing General Partners instructed that applicant pay its obligations or debts, liquidate, and distribute its assets. As a result, all outstanding shares of limited partnership interests as of the close of business on July 13, 1992, were liquidated at the then-current net asset value per share of $13.87.

3. In connection with the liquidation, applicant incurred approximately $2,500 of aggregate expenses, consisting primarily of legal expenses, all of which were paid by applicant's investment adviser, The Dreyfus Corporation. Applicant's organizational costs and

initial offering expenses of $3,003, which were being amortized by applicant, were reimbursed to applicant by the Dreyfus Corporation out of a portion of the proceeds it received from the liquidation of its shares of applicant.

4. As of the date of the application, applicant had no securityholders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

5. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file a statement as to its dissolution, as required under Delaware law.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-25462 Filed 10-20-92; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-19025; 812-7853]

## Pilgrim State Tax-Free Trust, et al.; Application

October 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Pilgrim State Tax-Free Trust (the "Trust"), Pilgrim Magnacap Fund, Pilgrim GNMA Fund, Pilgrim Short-Term Multi-Market Income Fund, Pilgrim Short-Term Multi-Market Income Fund II, Pilgrim Corporate Utilities Fund, Pilgrim Strategic Investment Series on behalf of its Pilgrim High Yield Trust series (collectively, excluding the Trust, the "Existing Pilgrim Funds"), Pilgrim Management Corporation (the "Adviser") and Pilgrim Distributors Corp. (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of such Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order that would (a) permit the Trust and the Existing Pilgrim Funds to issue two classes of shares with different voting rights and expense allocations, and (b) permit the Trust to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of one class.

**FILING DATES:** The application was filed on January 17, 1992 and amended on March 3, 1992, May 14, 1992, and September 4, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 10100 Santa Monica Boulevard, Los Angeles, California 90067.

**FOR FURTHER INFORMATION CONTACT:** Maura A. Murphy, Senior Attorney, at (202) 272-7779 or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representation

1. The Trust intends to operate as an open-end management investment company registered under the Act. The Adviser will serve as the Trust's investment manager and the Distributor will act as principal underwriter of the Trust's shares. The series of the Trust are referred to collectively, in whole or in part, as the context requires, as the "Funds."

2. Each Existing Pilgrim Fund is an open-end management investment company registered under the Act. The Adviser provides investment management services and the Distributor acts as principal underwriter for each Existing Pilgrim Fund.

3. Applicants request that relief also apply to any other open-end management investment company for which the Adviser or Distributor may in the future become, respectively, the investment adviser or principal underwriter.

4. Applicants seek an exemption from sections 18(f), 18(g), and 18(i) of the Act to permit the Funds to issue two classes of shares which shall have differing voting rights and expense allocations, as described below, and to permit the Existing Pilgrim Funds in the future to issue two classes of shares which shall have differing voting rights and expense allocations, subject to the same representations and conditions as the Funds.

5. The Trustees of the Trust will approve the establishment of a dual distribution system (the "Dual Distribution System") which will enable each Fund to offer investors the option of purchasing shares either subject to a conventional front-end sales load (the "Front-End Option") or subject to a CDSC (the "Deferred Option").

6. The Dual Distribution System will be implemented by having the Funds create two classes of shares, with Class A shares subject to the Front-End Option and Class B shares subject to the Deferred Option. The two classes will each represent interests in the same portfolio of investments. The two classes will be identical except that (i) the distribution fees payable by a Fund to the Distributor attributable to each class pursuant to the distribution plans proposed to be adopted by the Funds in accordance with rule 12b-1 under the Act will be higher for Class B shares; (ii) Class B shares will bear any incremental expenses resulting from the deferred sales arrangement subsequently identified which shall be approved by the SEC pursuant to an amended order; and (iii) each class will vote separately as a class with respect to a Fund's rule 12b-1 distribution plan.

7. Under the Front-End Option, an investor will purchase Class A shares at net asset value plus a front-end sales load. The sales load will be subject to reductions for larger purchasers, under a combined purchase privilege, or under a letter of intent. The sales will be subject to certain other reductions permitted by section 22(a) of the Act and set forth in the registration statement of the Trust. The public offering price for the Class A shares will be computed in accordance with rule 22c-1, section 22(d), and other relevant provisions of the Act and the rules and regulations thereunder. Each Fund will also pay to the Distributor a distribution fee pursuant to the Fund's rule 12b-1 distribution plan at an annual rate of up to 0.25 of 1% of the average daily net asset value of the Class A shares.

8. Under the Deferred Option, investors will purchase Class B shares at net asset value per share without the imposition of a sales load at the time of purchase. Each Fund will pay to the Distributor a distribution fee pursuant to the distribution plan at an annual rate of up to 1% of the average daily net asset

value of the Class B shares. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of years of their purchase (which will be at least three years but will not exceed six years) generally will be subject to a CDSC imposed by the Distributor. The CDSC is expected to range from 3% to 5% (but can be higher or lower) on shares redeemed during the first year after purchase and will be reduced at a rate of 1% (but can be higher or lower) per year over the applicable CDSC period, so that redemptions of shares held after that period will not be subject to a CDSC.

9. Under the Trust's distribution plans, the Distributor will not be entitled to any specific percentage of the net asset value of each class of shares of such Fund or other specific amount. Payments will be made only to reimburse the Distributor for expenses incurred in providing distribution-related services (including, in the case of Class B shares, commission expenses as described in more detail below). Each Fund will accrue at a rate (but not in excess of the applicable maximum percentage rate) which is reviewed by the Trust's Board of Trustees quarterly. If at any time the amount accrued by a Fund would exceed the amount of distribution expenses incurred by the Distributor with respect to such Fund during the fiscal year (plus, in the case of Class B shares, prior unreimbursed commission-related expenses), then the rate of accrual will be adjusted accordingly. Unreimbursed distribution expenses will be determined daily and the Distributor shall not be entitled to any amount with respect to any day on which there exist no unreimbursed distribution expenses. In no event will the amount paid by the Funds to the Distributor exceed the unreimbursed expenses previously incurred by the Distributor in providing distribution-related services.

10. Proceeds from the distribution fee and, in the case of Class B shares, the CDSC, will be used to compensate financial intermediaries with a service fee in an amount of up to 0.25 of 1%, annualized, of the average daily net asset value of the Class A shares or Class B shares maintained in the Funds by their customers and to defray the expenses of the Distributor with respect to providing distribution-related services, including commissions paid on the sale of Class B shares.

11. Proceeds from the CDSC imposed on Class B shares will reduce the amount of distribution expense for which the Distributor may be reimbursed. To the extent the Distributor does not use the distribution fee or CDSC to fund payments to financial intermediaries, under both the Front-End Option and the Deferred Option the Distributor may use the fees attributable to shares of each class to defray its expenses incurred in distributing shares of that class, including preparing, printing and distributing a Fund's prospectus and statement of additional information and reports used in connection with the sale of shares of that class.

12. All expenses incurred by the Funds not attributable to a specific class will be allocated *pro rata* to each class on the basis of the relative new asset value of the respective classes except for the expenses of the rule 12b–1 distribution plans.

13. Because of the additional expenses that will be borne solely by the Class B shares, the net income attributable to and the dividends payable on Class B shares for financial statement reporting purposes is expected to be lower than the net income attributable to and the dividends payable on Class A shares. For tax purposes, however, the difference between the distribution fees payable by Class B shares and the distribution fees payable by Class A shares (i.e., up to 0.75%) will be charged to Class B paid-in capital. As a result, Class B shares will be receiving dividends that include a return of capital under the Commission's financial reporting rules. It is therefore expected that the net asset value per share of the two classes will diverge over time. Assuming no change in existing tax laws or relevant interpretations or the SEC's financial reporting rules, any Existing Pilgrim Fund that issues two classes of shares will similarly capitalize rule 12b–1 fees for tax purposes.

14. The Trust is aware with respect to the Dual Distribution System of the need for full disclosure in each Fund's prospectus and statement of additional information of the differences between the Class A and Class B shares and the different expenses of the classes. Class A and Class B shares will be offered and sold through a single prospectus.

15. Applicants, other than the Existing Pilgrim Funds, also seek an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess and, under certain circumstances, waive a CDSC on certain redemptions of Class B shares.[1] The amount of any CDSC will be calculated according to a schedule set forth in each Fund's prospectus.

16. The CDSC will not be imposed on redemptions of Class B shares (a) purchased more than a specified period of up to six years (the "CDSC Period") prior to their redemption, or (b) derived from reinvestment of distributions. Further, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. No CDSC will be imposed on any shares of the Funds sold prior to the date of the exemptive order requested by this application. In determining whether a CDSC is applicable, it will be assumed that Class A shares will be redeemed first, then shares derived from reinvestment of distributions, then shares held longer than the CDSC Period, and finally shares held not longer than the CDSC Period.

17. Applicants seek to waive the CDSC on redemptions following the death or disability, as defined in section 72(m)(7) of the IRC, of a shareholder. In waiving the CDSC on redemptions following the death of disability of a shareholder, the Funds will comply with the requirements of rule 22d–1 under the 1940 Act as if such CDSC were a sales load.

18. If the Trustees of the Trust determine to discontinue the waiver of the CDSC described above, the disclosure in each Fund's prospectus will be revised appropriately. Also, any Class B shares purchased prior to the termination of the waiver will have the CDSC waived as provided in the Fund's prospectus at the time the shares were purchased.

**Applicants' Legal Analysis**

1. Applicants seek an exemption from section 18(f), 18(g), and 18(i) of the Act to the extent that the proposed issuance of Class A and Class B shares representing interests in the Funds might be deemed to (a) result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18 (f)(1), and (b) violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Dual Distribution System does not create the potential for abuses that section 18 was designed to redress. The Dual Distribution System does not involve borrowings and will not affect the Funds' assets or reserves. Nor will the proposed arrangement increase the speculative character of the Funds. The Funds' capital structure will not facilitate control without equity or other

[1] The Existing Pilgrim Funds have received such an exemption. Investment Company Act Release Nos. 17957 (Jan. 24, 1991) (notice) and 18007 (Feb. 20, 1991) (order).

investment and will not make it difficult for investors to value the Funds' securities.

3. Applicants believe that the Dual Distribution System will both facilitate the distribution of the Funds' securities and provide investors with a broader choice as to the method of purchasing shares. Under the Dual Distribution System, investors will be able to choose the method of purchasing shares that is most beneficial given the amount of their purchases, the length of time they expect to hold the shares and other relevant circumstances. Moreover, owners of both classes of shares may be relieved of a portion of the fixed costs normally associated with mutual funds since such costs would, potentially, be spread over a greater number of shares than they would be otherwise.

4. The proposed allocation of expenses and voting rights relating to the rule 12b–1 distribution plans is equitable and will not discriminate against either group of shareholders. Investors purchasing Class A shares will bear a proportionately lower share of a Fund's distribution expenses than holders of the Class B shares. However, each class of shares will vote separately as a class with respect to the Trust's rule 12b–1 distribution plans.

5. The rule 12b–1 plan applicable to Class B shares of the Funds provides that payments subject to a 0.75% limit are compensation for a sales commission, and such payments will cease after the Distributor has recovered its sales commission with interest. Private letter rulings issued by the Internal Revenue Service have concluded that distributions paid to shareholders of mutual funds with dual classes (where one class has a rule 12b–1 distribution fee and the other does not) are not preferential dividends since the rule 12b–1 distribution fees are viewed as indirect shareholder expenses. Applicants believe that the analysis in those private letter rulings supports the notion that such rule 12b–1 distribution fees are (1) akin to or a substitute for front-end sales loads and (2) considered as an indirect shareholder expense (instead of a fund expense) for purposes of determining whether distributions are preferential under section 562(c) of the Internal Revenue Code. Therefore, the Funds will not deduct the portion of the rule 12b–1 distribution fees related to sales commission. As a result, the distributions to Class B shareholders of the Funds will be higher for tax purposes and in comparison with mutual funds that deduct such fees. However, such distributions will include a return of capital for financial reporting purposes.

6. Applicants believe that the imposition of the CDSC on Class B shares of the Funds is fair and in the best interests of shareholders. The Dual Distribution System will permit Class B shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of Class B shares than if a sales load were imposed at the time of purchase.

**Applicants' Conditions**

The Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions, which will also be met by any Existing Pilgrim Fund if, in the future, such fund issues two classes of shares:

1. The Class A and Class B shares will represent interests in the same portfolio of investments of the Funds, and be identical in all respects, except as set forth below. The only differences between Class A and Class B shares of the Funds will relate solely to: (a) the impact of the disproportionate rule 12b–1 distribution plan payments allocated to each of the Class A shareholders and Class B shareholders of the Funds and any incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) the fact that each class will vote separately as a class with respect to the rule 12b–1 distribution plans, and (c) the designation of each class of shares of the Funds.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the Dual Distribution System prior to the implementation of the Dual Distribution System. The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Dual Distribution System is in the best interest of both the Funds and their respective shareholders.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Funds for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The rule 12b–1 distribution plans adopted to permit the assessment of a rule 12b–1 fee any class of shares will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting of shareholders is to be held within 16 months of the date that the Trust's registration statement becomes effective.

5. The Trustees of the Trust will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of Class A or Class B shares, respectively, will used to justify the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a particular class of shares will not be presented to the Trustees to justify the rule 12b–1 fee charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to this Class A shares and Class B shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee payments relating to each respective class of shares will be borne exclusively by that class.

7. The Adviser, the Distributor and the Trust will comply with section 19(a) and rule 19a–1 under the Act, including the provisions requiring dividend payments that include a return of capital to be accompanied by a written statement clearly indicating that investors are receiving a return of capital and identifying what portion of the payment is a return of capital.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert") who has rendered a report of the Adviser, the Distributor, and the Trust, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure

that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work paper of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the SEC staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The Adviser, the Distributor, and the Trust have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. The Adviser, the Distributor, and the Trust will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation for selling one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when Class A and Class B shares may appropriately be sold to particular investors. The Adviser, the Distributor, and the Trust will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees.

13. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements (including related accounting practices and resultant differing tax consequences for Class A and Class B shareholders), services, fees, sales loads, and deferred sales loads applicable to each class of shares offered through the prospectus. Class A and Class B shares will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or B shares, it will disclose the expenses and/or performance data applicable to both classes. The Adviser, the Distributor, and the Trust will not include a distribution rate in any advertisement for a Fund. In addition, all advertisements and sales literature for the Funds will comply with rules 482 and 156 under the Securities Act of 1933, regardless of the means by which such advertisements and sales literature are disseminated. The information provided by Applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A and Class B shares.

14. The Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution plans in reliance on the exemptive order.

15. The Adviser, the Distributor, and the Trust will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16169 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25463 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 19029; 812–8010]**

## North American Security Trust, et al.; Application

October 15, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

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**APPLICANTS:** North American Security Trust (the "Trust"); NASL Financial Services (the "Adviser"); and Wood Logan Distributors, Inc. ("Wood Logan").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order to permit the Trust to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares sold with no initial sales charge, and to waive the CDSC in certain cases.

**FILING DATE:** The application was filed on July 31, 1992 and amended on October 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 116 Huntington Avenue, Boston, MA 02116.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trust, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently consists of seven separate investment portfolios. The Adviser, a registered investment adviser and broker-dealer, serves as investment adviser and distributor to the Trust. Wood Logan solicits securities dealers to sell Trust shares, offers sales training, prepares and distributes certain sales and promotional materials, and otherwise assists in the distribution of Trust shares.

2. The Trust portfolios other than the Money Market Trust are currently offered to the public at net asset value plus a 4.00% sales charge for purchases of less than $100,000, with no sales charge for purchases of $100,000 or more. No sales charge is imposed on any purchases of the Money Market Trust. Each Trust portfolio, except the Money Market Trust, also imposes fees under a rule 12b–1 distribution plan.

3. Trust shares may be purchased with a reduced or eliminated sales charge in the following ways: (a) An investor may aggregate purchases with other purchases and existing holdings, and with the purchases and holdings of certain family members, to reach $100,000; (b) with a statement of intention to purchase in a thirteen-month period enough shares to be eligible for the $100,000 exemption; (c) groups of investors fitting criteria described in the Trust prospectus may be able to avail themselves of reduced sales charges that reflect economies of sales efforts resulting from selling to such groups; (d) if the purchase is made with the proceeds of a redemption of the shares of another related or unrelated load mutual fund within the preceding sixty days, provided that no CDSC, fee or other charge is assessed upon the redemption of such other fund ("load fund rollovers"); and (e) in connection with exchanges of the shares of one portfolio for those of another, except that a sales charge is deducted upon an exchange of Money Market Trust shares (other than those obtained by way of an exchange of load portfolio shares) for shares of a load portfolio. When making an initial purchase at net asset value pursuant to the load fund rollover provision, the shareholder must provide along with his or her application a written representation that neither a deferred sales load, fee, nor other charges was imposed upon the specific redemption proceeds used to purchase the Trust shares, along with an activity statement reflecting the redemption. Also, certain individuals purchase Trust shares without imposition of a sales charge because of their relationship to the Trust, the Adviser, or Wood Logan.

4. Applicants propose to impose a CDSC of 1% on redemptions within one year of the purchase of Trust shares that: (a) Were purchased with no initial sales charge because the purchase (singly or as part of the investor's accumulated holdings) was in the amount of $100,000 or more; (b) were obtained by exchanging Money Market Trust shares with no initial sales charge imposed at the time of the exchange solely because the acquired shares (singly or as part of the investor's accumulated holdings) were in the amount of $100,000 or more; (c) were purchased with no initial sales charge as part of a load fund rollover; and, (d) were obtained through an exchange for shares subject to the CDSC. The holding period and amount of the CDSC and the magnitude of the purchase to which it applies are each subject to change.

5. The amount of the CDSC will be calculated as a percentage of the lesser of the value of the redeemed shares at the time of purchase or at redemption. In determining whether a CDSC is applicable, any shares in the redeeming shareholders account that may be redeemed without charge will be assumed to be redeemed prior to those subject to a CDSC. No CDSC will be imposed on shares purchased with reinvested income dividends or capital gains distributions, shares on which a front-end sales charge has been paid, shares purchased by individuals entitled to purchase at no-load because of their relationship to the Trust or its management, shares purchased prior to the issuance of an order granting the requested relief, and shares acquired through an exchange (if the exchanged shares would not have been subject to a CDSC upon redemption). In all exchange transactions, applicants will comply with rule 11a–3. Since Money Market Trust shares are not subject to a sales load or distribution fees, time spent in that portfolio will not count towards the one-year applicability of the CDSC.

6. Applicant's propose to waive the CDSC that would otherwise be applicable to a redemption of shares in connection with: (a) Lump-sum or other distributions from a qualified corporate or self-employed retirement plan following retirement, termination of employment, death, disability, or following the attainment of age 59½ of a plan participant; (b) the hardship of a plan participant to the extent permitted under the Internal Revenue Code of 1986; (c) a loan made by a qualified corporate or self-employed retirement plan to a participating employee; (d) distributions and redemptions made within the first year that are made automatically and periodically, with payments sent directly to the shareholder or person designated by the shareholder, pursuant to a systematic withdrawal plan where the payments do not exceed 10% annually of the value of the account; (e) a tax free return of an excess contribution to an individual retirement account; and (f) the combination of the Trust or any portfolio of the Trust with any other investment company by merger, acquisition of assets, or otherwise.

### Applicants' Legal Conclusion

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Trust's shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a) (32), 2(a) (35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act as that rule is currently stated, Investment Company Act Release No. 16619 (Nov. 2, 1989), and as it may be re-proposed, adopted, or modified in the future.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25517 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19028; 812-8094]

## Transamerica Bond Fund, et al.; Application

October 15, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Transamerica Bond Fund, Transamerica California Tax-Free Income Fund, Transamerica Capital Appreciation Fund, Transamerica Investment Trust, Transamerica Special Series, Inc., Transamerica Tax-Free Bond Fund, and other registered, open-end management investment companies and series thereof, which may at any time hereafter offer shares on a basis which is similar in all respects to the arrangements described herein, for which the Adviser (as defined below), or any person controlling, controlled by, or under common control with the Adviser, may hereafter serve as investment adviser, and for which the Distributor (as defined below), or any person controlling, controlled by, or under common control with the Distributor, my hereafter serve as principal underwriter (the "Funds"); Transamerica Fund Management Company (the "Adviser"); and Transamerica Fund Distributors, Inc. (the "Distributor").

**RELEVANT ACT SECTIONS:** Exemption requested pursuant to section 6(C) from the provisions of sections 2(a)(32), 2(a)(35), 22(C), and 22(d) and rule 22c-1.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares and to waive the CDSC in certain specified instances.

**FILING DATE:** The application was filed on September 18, 1992 and amended on October 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1000 Louisiana, Houston, Texas 77002.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. Each Fund is a registered, open-end, diversified management investment company. The Adviser, a registered investment adviser, serves as investment adviser to the Funds. Transamerica Investment Services, Inc., a registered investment adviser, acts as a sub-adviser for some of the Funds. The Distributor, a registered broker-dealer, acts as the principal underwriter to the Funds.

2. The Funds are authorized by their articles of incorporation or declaration of trust to issue series of their shares, with each series representing interests in a separate investment portfolio. Four Funds presently offer multiple series of their shares. As permitted by order of the SEC,[1] four of the Funds also issue two classes of shares. In accordance with the terms of another order of the SEC,[2] one class of shares is offered for sale subject to imposition of a CDSC upon redemption ("Class I shares"), and the other class ("Class II shares") is offered for sale subject to imposition of a front-end sales charge ("FESC") and certain rule 12b-1 distribution fees. The FESC is deducted from the offering price of Class II shares.

3. Presently, no FESC is imposed on aggregate purchase transactions totalling $1,000,000 or more of Class II shares. In calculating an investor's aggregate purchase for this purpose, an investor may aggregate his or her current purchases with his or her present holdings. Where an investor has entered into a statement of intention, the investor may aggregate future purchases made within thirteen months of the date he or she entered into the statement of intention. The aggregation privileges apply to all of an investor's shares of Funds that impose a FESC, including such shares purchased or held by the investor's spouse and children under the age of 21.

4. Applicants seek exemptive relief to impose a CDSC on Class II shares of the Funds sold in aggregate amounts of $1,000,000 without the imposition of a FESC. The CDSC will be imposed on such shares if they are redeemed within 12 months after the end of the calendar month of their purchase. The CDSC amount will be up to 1% of the lesser of the aggregate net asset value of the shares at the time of purchase, or the aggregate net asset value of the shares at the time of redemption. In determining whether a CDSC is payable, and the amount of any CDSC, it will be assumed that shares that are not subject to the CDSC are redeemed first, and other shares are redeemed in the order purchased. No CDSC will be imposed on exchanges of Class II shares which were purchased on a CDSC basis, although a CDSC will be imposed on the exchanged shares if they are redeemed within the CDSC period. No CDSC will be imposed on shares purchased prior to the effective date of the requested order.

5. Applicants propose to waive or reduce the CDSC in the following circumstances: (a) On redemptions following the death or disability of a shareholder, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"); (b) on redemptions of shares sold in aggregate amounts of $1,000,000 or more to any national or state bank, federal or state savings bank or savings and loan, or federal credit union; (c) on redemptions in connection with (i) retirement distributions to participants or beneficiaries of, or loans to participants or beneficiaries from, plans qualified under section 401(a) of the Code, custodial accounts created under section 403(b)(7) of the Code, individual retirement accounts created under section 408(a) of the Code, deferred compensation plans created under section 457 of the Code, or other employee benefit plans (collectively, "employee benefit plans"), and (ii) returns of excess contributions made to employee benefit plans; and (d) on redemptions effected pursuant to a Fund's right to involuntarily redeem a shareholder's account if its value is less than the Fund's minimum account size, or involuntary redemptions by operation of law.

6. Under a reinstatement privilege, shareholders who are assessed a CDSC in connection with the redemption of Class II shares of a Fund followed by

[1] Investment Company Act Release Nos. 18250 (July 26, 1991) (notice) and 18280 (Aug. 20, 1991) (order).

[2] Investment Company Act Release Nos. 16009 (Sept 28, 1987) (notice) and 16073 (Oct. 23, 1987) (order).

reinvestment of some or all of the redemption proceeds in the shares of any Fund within six months after such redemption (or such other reinstatement period as the Funds may establish from time to time) will be permitted to do so at net asset value (and without being subject to any CDSC on any subsequent redemption) if such entitlement is claimed at the time of the reinvestment. In the event the reinstatement period changes after a shareholder redeems out of a Fund, the shareholder will be allowed to reinvest within the reinvestment period in effect at the time of the redemption.

**Applicants' Legal Conclusion**

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Trust's shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

**Applicants' Condition**

If the requested exemptive relief is granted, applicants agree to comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619, November 2, 1988) as currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25518 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19017; 811–5920]**

## U.S. Government Money Market Portfolio; Application

October 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** U.S. Government Money Market Portfolio.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 23, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 9, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Law Clerk, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicants' Representations**

1. Applicant, a New York trust, is an open-end, diversified management investment company. On October 4, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement on Form N–1A pursuant to section 8(b) of the Act. Applicant never registered its securities pursuant to the Securities Act of 1933.

2. Applicant was organized as one of ten hub funds in a hub and spoke arrangement with Yankee Funds. Yankee Funds is a registered management investment company with ten series, each of which is a spoke fund to one of the ten hub funds. On October 22, 1991, Yankee Funds was notified that its principal record owners, Fleet Bank of Massachussets N.A. and Fleet Bank N.A., acting in their capacity as trustees for various fiduciary accounts, intended to redeem their interests and effectively liquidate Yankee Funds, and because Yankee Funds owned substantially all of applicant's shares, effectively liquidate applicant.

3. On February 7, 1992, applicant disposed of its portfolio securities, which consisted solely of U.S. Treasury obligations, for cash at the maturity value of securities. On that same date, applicant distributed $4,687,514 to its beneficial owners on a *pro rata* basis.

4. In connection with the liquidation, applicant expects to incur expenses consisting of professional fees, custodial and transfer agency fees, and certain other minor expenses totaling $14,008. Applicant has retained cash totaling $14,869 and cash receivables totaling $7,297, which will be used to pay liquidation expenses, and operating expenses incurred up to the date of liquidation. If any cash remains after paying all expenses, a distribution of all remaining cash will be made to the beneficial owners of applicant on a *pro rata* basis. The unamortized organizational expenses of applicant as of October 21, 1991, totaling $7,024, were borne by Fleet Bank of Massachusetts, N.A., applicant's investment adviser, and Fleet Bank N.A.

5. Applicant has debts and liabilities consisting of termination expenses and legal and audit fees associated with applicant's normal operating expenses incurred up to the date of liquidation. Applicant is not a party to any litigation or administrative proceeding. Applicant has no shareholders and is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25461 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19026; File No. 812–7980]**

## Western Reserve Life Assurance Co. of Ohio, et al.

October 14, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for an order of exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Western Reserve Life Assurance Co. of Ohio ("WRL"), WRL Series Annuity Account (the "WRL Account"), PFL Life Insurance Company ("PFL", together with WRL, the "Company"), PFL Endeavor Variable Annuity Account (the "PFL Account"), any other separate accounts established by the Company to support certain flexible premium variable deferred annuity contracts issued by the Company (the "Other Accounts",

together with the WRL Account and the PFL Account, the "Account") and InterSecurities, Inc. ("InterSecurities").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Account in connection with the offering of certain flexible premium variable deferred annuity contracts by WRL through the WRL Account (the "WRL Contracts") and by PFL through the PFL Account (the "PFL Contracts") or any variable deferred annuity contracts that may in the future be issued by the Company that are substantially identical to the WRL Contracts and to the PFL Contracts but that are issued through the Other Accounts (the "Substantially Identical Contracts", together with the WRL Contracts and the PFL Contracts, the "Contracts").

**FILING DATE:** The application was filed on July 10, 1992 and an amended and restated application was filed on September 28, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 9, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contented. Persons may request notification of the date of the hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants: Western Reserve Life Assurance Co. of Ohio, 201 Highland Avenue, Largo, Florida 34640; PFL Life Insurance Co., 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Whisler, Attorney, at (202) 272-2060 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

**Applicants' Representations**

1. WRL is a stock life insurance company incorporated under the laws of Ohio on October 1, 1957. WRL is a wholly-owned subsidiary of AUSA Life Insurance Company, a stock life insurance company, which is, in turn, a wholly-owned subsidiary of AEGON USA, Inc. ("AEGON"). AEGON is a wholly-owned subsidiary of AEGON nv. AEGON nv is a Netherlands corporation and a publicly traded international insurance group.

2. The WRL Account is registered with the Commission as a unit investment trust under the 1940 Act. Any Other Account established in the future by WRL to support Contracts issued by WRL will be established as a separate account under the laws of WRL's state of domicile and will be a unit investment trust registered with the Commission. The WRL Account currently offers three investment options. WRL will establish subaccounts (the "WRL Subaccounts") for each option offered in connection with the Contracts issued by WRL. Each WRL Subaccount will invest exclusively in the share of a specific corresponding portfolio of WRL Series Fund, Inc. (the "Fund"). Each subaccount of Other Accounts established by WRL will invest exclusively in the share of a specific corresponding portfolio of the Fund or of another registered investment company (together with portfolios of the Fund, the "Portfolios").

3. PFL is a stock life insurance company incorporated in Iowa on April 19, 1961 under the name NN Investors Life Insurance Company. PFL is a wholly-owned, indirect subsidiary of AEGON.

4. The PFL Account is registered with the Commission as a unit investment trust under the 1940 Act. Any Other Account established in the future by PFL to support Contracts issued by PFL will be established as a separate account under the laws of PFL's state of domicile and will be a unit investment trust registered with the Commission. The PFL Account expects to offer five investment options. PFL will establish additional subaccounts ("PFL Subaccounts") for each investment option offered in connection with the Contracts issued by PFL. Each PFL Subaccount will invest exclusively in the shares of a specific corresponding Portfolio of the Fund. Each subaccount of Other Accounts established by PFL will invest exclusively in the shares of a specific corresponding Portfolio of the Fund or of another registered investment company.

5. InterSecurities, an affiliate of the Company, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and will serve as the principal underwriter of the Contracts.

6. Each of WRL and PFL intends to offer up to three classes of Contracts. Each class of Contracts is designed for a different market and therefore differs from each of the other two classes with respect to certain charges deducted, death benefit provisions, compensation schedules payable in connection with the sale of the Contracts and partial withdrawal rights. Each of the Contracts is an individual flexible premium variable deferred annuity. Applicants refer to the Contracts as "Class One Contracts", "Class Two Contracts" and "Class Three Contracts". Each of the three classes of Contracts provides for the accumulation of values on a variable basis, a fixed basis, or both, and for the payment of periodic annuity benefits on either a variable or a fixed basis.

7. The Contracts may be used in connection with a retirement plan qualified ("Qualified Plan") under Sections 401, 403(a), 403(b), 408 or 457 of the Internal Revenue Code (the "Code"). Additionally, the Contracts may be issued other than in connection with a retirement plan or may be issued in connection with a retirement plan not qualified under the Code ("Non-Qualified Contracts").

8. Each of the three classes of Contracts may be purchased under a flexible premium plan which provides for an initial purchase payment and for subsequent purchase payments; yet, the owner of a Contract need not make additional payments beyond the initial purchase payment. The initial purchase payment generally must accompany the application and must be at least $5,000 for Non-Qualified Contracts. For Individual Retirement Annuities ("IRAs") the minimum initial purchase payment is $1,000 and for Qualified Plans other than IRAs, the minimum initial purchase payment is $50. Subsequent purchase payments may be made under any class of Contract provided that each purchase payment is at least $50 unless the Company consents to be lesser amount and that the total of all purchase payments in any Contract year does not exceed $500,000 unless the Company consents to a larger amount.

9. At any time prior to the maturity date of the Contract and subject to certain conditions, a Contract may be surrendered for an amount equal to the

sum of its Subaccount values and its fixed account value less any applicable contingent deferred sales charges, annual contract charges deducted in reliance upon rule 6c–8(c) under the 1940 Act, and premium taxes ("Cash Value"). Portions of a Contract's Cash Value are permitted to be withdrawn at any time prior to the maturity date. The Company reserves the right to prohibit any partial withdrawals prior to the first anniversary of the Contract. The amount that can be withdrawn is limited: for Class One Contracts, the minimum Cash Value remaining after a withdrawal must be $10,000; for Class Two Contracts, the minimum Cash Value remaining after a withdrawal must be $25,000; and for Class Three Contracts, the minimum Cash Value remaining must be $5,000.

10. If a Contract is in force on its maturity date, annuity payments based on the rates guaranteed in the Contract will be made to the annuitant in accordance with the Contract's terms and the annuity option selected by the Contract owner. The Contracts contain death benefit options. The amount of the death benefit is determined and payable on the business day which, or the business day next following the day on which, the Company receives due proof of death and election by the beneficiary regarding how death benefits should be paid. For Class One Contracts, the amount of the death benefit paid depends upon whether the Contract has been in effect for five years. Up to the fifth anniversary of the Class One Contract, the death benefit is equal to the greater of (1) the sum of a Contract's Subaccount values plus its fixed account value (the "Annuity Value") or (2) the excess of purchase payments made under the Contract over amounts withdrawn from the Contract. After the fifth anniversary, the death benefit is equal to the greatest of (1) the Annuity Value, (2) the excess of purchase payments made under the Contract over amounts withdrawn from the Contract, or (3) the Annuity Value as of the Contract's fifth anniversary, decreased by any subsequent withdrawals. For Class Two Contracts, the death benefit is equal to the greater of (1) the Annuity Value, or (2) the excess of purchase payments over amounts withdrawn from the Contract. For Class Three Contracts, the amount of the death benefit depends upon whether the Contract has been in effect for seven years. Up to the seventh anniversary of a Class Three Contract, the death benefit is equal to the greater of (1) the Cash Value, or (2) the excess of purchase payments made under the Contract over amounts withdrawn from the Contract. After the seventh anniversary, the death benefit is equal to the greatest of (1) the Cash Value, (2) the excess of purchase payments made under the Contract over amounts withdrawn from the Contract, or (3) the Cash Value as of the Contracts seventh anniversary, less amounts subsequently withdrawn from the Contract.

11. On each Contract anniversary through the maturity date, the Company will deduct an annual contract charge of $30 under Class One and Class Two Contracts and $35 under Class Three Contracts as partial compensation for the Company's cost of performing records maintenance for the Contracts. Applicants represent that the charge for each class of Contracts is not greater than the Company's average expected cost, without profit, of the records maintenance services to be provided for the life of that class of Contracts. The Company guarantees that it will not increase the amount of the annual contract charge. Applicants represent that the charge will be deducted in reliance upon rules 26a–1 and 6c–8(c) under the 1940 Act.

12. The Company will deduct a daily administrative charge at an annual rate of .15% of the value of the net assets in each Subaccount from all Contracts. Applicants guarantee that this rate will not increase for the duration of the Contract. Applicants state that the charge is not greater than the Company's average expected cost without profit, of the administrative services to be provided for the life of the Contracts. Applicants rely on rule 26a–1 under the 1940 Act to impose the charge.

13. No deductions for sales expenses are made from purchase payments with respect to any class of Contracts. Under Class One and Class Three Contracts, however, a contingent deferred sales charge ("CDSL") is assessed against a Contract's Annuity Value when amounts are withdrawn or surrendered. The length of time from the Company's receipt of a purchase payment to the time of withdrawal or surrender determines whether the CDSL will be deducted. Under Class One Contracts, the CDSL is a percentage of the purchase payments made during the five years immediately preceding the withdrawal or surrender request. The CDSL is as follows:

| Charge | Number of years from receipt of purchase payments |
|---|---|
| 6 percent | 0–2. |
| 4 percent | 3. |
| 3 percent | 4. |
| 2 percent | 5. |
| 0 percent | Over 5. |

Under Class Three Contracts, the CDSL is percentage of the purchase payments made during the seven years immediately preceding the withdrawal or surrender request. The charge is as follows:

| Charge (percent) | Number of years from receipt of purchase payments |
|---|---|
| 8 | 0–1. |
| 7 | 2. |
| 6 | 3. |
| 5 | 4. |
| 4 | 5. |
| 3 | 6. |
| 2 | 7. |
| 0 | over 7. |

Under both Class One and Class Three Contracts, for the first withdrawal during each Contract year, the Company will waive the CDSL with respect to the first 10% of the Annuity Value that is subject to the charge. This waiver does not apply to full surrenders.

14. Applicants assert that the CDSL for Class One and Class Three Contracts permits the Company to recover sales expenses that it advances. Such advances include: Compensation paid for selling the Contracts; costs incurred for printing prospectuses and sales literature; and costs incurred for advertising. Applicants state that the proceeds of the CDSL may be insufficient to cover these sales expenses. To the extent the proceeds are insufficient, the Company will cover the deficiency from its general account assets, which may include profits from the mortality and expense risk charge. Any sales expenses for the Class Two Contracts will be paid by the Company from its general account assets, which may include profits from the morality and expense risk charge.

15. A Contract owner may transfer assets among the different Subaccounts and to the fixed account at any time prior to the Contract's maturity date. No charge is imposed for the first twelve such transfers made during any Contract year. The Company will deduct a $10 charge for the thirteenth and each subsequent transfer made during a Contract year. The charge will be deducted from the amount transferred.

Applicants state that the transfer charge will not be increased. Applicants represent that the transfer charge is not greater than the Company's average expected cost, without profit, of the transfer administrative services to be provided for the life of the Contracts. Applicants rely on rule 26a–1 under the 1940 Act to impose the transfer charge.

16. For Class Two and Class Three Contracts, the Company will deduct a daily mortality and expense risk charge from the Account at an annual rate of 1.25% of the value of the average daily net assets in each Subaccount attributable to those classes of Contracts. For Class One Contracts, the Company will deduct a daily mortality and expense risk charge from the Account during the Accumulation Period at an annual rate of 1.10% of the average daily value of the net assets in each Subaccount attributable to Class One Contracts if a variable annuity payment option is selected.

**Applicants' Legal Analysis and Conditions**

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit Applicants' assessment of the daily charge for mortality and expense risks under the Contracts. Applicants state that the terms of the relief requested with respect to any future Contracts funded by the Other Accounts are consistent with the standards set forth in section 6(c) of the 1940 Act. Applicants state that without the requested relief, the Company would have to request and obtain exemptive relief for each new Other Account to fund Contracts. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application.[1] Applicants state that if the Company were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by increased overhead of the Company. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Both the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, impair the Company's ability to effectively take advantage of business opportunities as such opportunities arise.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants argue that the Company assumes two mortality risks under each class of Contracts: that the annuity rates under the Contracts cannot be changed even if annuitants live longer than projected; and that the Company may be obligated to pay a death benefits claim in excess of a Contracts' Cash Value. The Company also assumes an expense risk through its guarantee not to increase the charges for the issuance and the administration of the Contracts and the administration of the Account regardless of the Company's actual expenses.

4. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under each Class of Contracts will never exceeded an annual rate of 1.25% of the value of the net assets in the Account. Applicants state that, of that amount, for Class One Contracts after the maturity date, for Class Two Contracts, and for Class Three Contracts, approximately .625% is attributable to mortality risks and approximately .625% is attributable to expense risks. Applicants state that, for Class One Contracts during the Accumulation Period, approximately .55% is attributable to mortality risks and approximately .55% is attributable to expense risks. Applicants submit that each of these charges is consistent with the protection of investors because each such charge is a reasonable and proper insurance charge. The Company represents that the charges of 1.10% and 1.25% per annum for mortality and expense risks assumed by the Company are within the range of industry practice for comparable annuity products. This representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as: the current charge levels; the existence of charge level guarantees; and the guaranteed annuity rates. The Company will maintain and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

5. Applicants acknowledge that where the Company's mortality experience and unreimbursed expenses are less than anticipated, the mortality and expense risk charge may be a source of profit. This profit would increase the general assets of the Company available to pay distribution expenses borne by the Company. Under such circumstances, the mortality and expense risk charge might be viewed by the Commission as providing for some or all of the costs related to the distribution of the Contracts. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and owners of each class of Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by the Company and which will be available to the Commission.

6. The Company represents that the Account will invest only in management investment companies which undertake, in the event any such company adopts a plan under rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the investment company, formulate and approve any plan under rule 12b–1 to finance distribution expenses.

**Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–25464 Filed 10–20–92; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants represent that, during the notice period, the application will be amended to include these representations.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD-92-057]

### National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, November 9 and 10, 1992, at the Adam's Mark Hotel, 2900 Briarpark Drive at Westheimer, Houston, Texas, beginning at 8:45 a.m. and ending at 4 p.m. The agenda for the meeting will be as follows:

1. Review of action taken at the 49th meeting of the Council.
2. Executive Director's Report.
3. Report of the Consumer Affairs and Standards Review Subcommittee.
4. Report on Inflatable Personal Flotation Device Project.
5. Vessel Mooring Issue Subcommittee Report.
6. Report on the 1992 National Association of State Boating Law Administrators Conference.
7. Passengers for Consideration Update.
8. Report of the Multiple-Use Waterways Subcommittee.
9. Personal Watercraft Definition and Requirements Subcommittee Report.
10. Recreational Boating Safety Regulations Status Report.
11. Briefing on Hurricanes.
12. Discussion on Timing of National Safe Boating Week.
13. Report on Insurance Based Model for Collection of Boating Accident Statistics.
14. Update on Weathering Effects on Personal Flotation Devices, and USCG "Logo".
15. Report on Boating Standards Issues.
16. Houston-Galveston Boating Safety Issues.
17. Remarks by Chief, Office of Navigation Safety and Waterway Services.
18. Chairman's Session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Dated: October 15, 1992.

W.J. Ecker,

*Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 92-25523 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD-92-056]

### National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on Consumer Affairs and Standards Review, Personal Watercraft Definition and Requirements, Vessel Mooring Issue, Multiple-Use Waterways and Propeller-Driven Personal Watercraft to be held on Saturday, November 7, 1992, at the Adam's Mark Hotel, 2900 Briarpark Drive at Westheimer, Houston, Texas, between 1:30 p.m. and 5:30 p.m. The agenda for each meeting will be to review the status of various projects undertaken by the subcommittee and initiate any necessary new tasks.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Dated: October 16, 1992.

W.J. Ecker,

*Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 92-25524 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Approval of Noise Compatibility Program; Baton Rouge Metropolitan Airport; Baton Rouge, LA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Greater Baton Rouge Airport District under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 31, 1992, the FAA determined that the noise exposure maps submitted by the Greater Baton Rouge Airport District under part 150 were in compliance with applicable requirements. On September 22, 1992, the Administrator approved the Noise Compatibility Program. Most of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Baton Rouge Metropolitan Airport Noise Compatibility Program is September 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0610, (817) 624-5594. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Baton Rouge Metropolitan Airport, Baton Rouge, Louisiana, effective September 22, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program

recommendations is measured according to the standards expressed in FAR part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an Airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local laws. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Greater Baton Rouge Airport District submitted to the FAA on December 4, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 9, 1990, through March 23, 1992. The Baton Rouge Metropolitan Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 31, 1992. Notice of this determination was published in the **Federal Register** on April 15, 1992.

The Baton Rouge Metropolitan Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1996. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review on the program on March 31, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 10 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 22, 1992.

Outright approval was granted for 7 of the 10 specific program elements. Approved elements included a runway use program, establishment of a noise abatement committee, amendment of the local comprehensive plan, establishment of an airport noise information program, land acquisition, a sales assistance program for private residences, and a sound insulation program for private residences. Partial approval was given to the adoption of a State of Louisiana zoning ordinance and the sound insulation of school and public buildings. An element promoting limited residential zoning was disapproved.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 22, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Baton Rouge Metropolitan Airport.

Issued in Fort Worth, Texas, October 2, 1992.

**Hugh W. Lyon,**

*Assistant Manager, Airports Division.*

[FR Doc. 92-25557 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

## Approval of Noise Compatibility Program Greater Peoria Regional Airport Peoria, Illinois

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Greater Peoria Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 12, 1991, the FAA determined that the noise exposure maps submitted by the Greater Peoria Regional Airport under part 150 were in compliance with applicable requirements. On September 23, 1992, the Assistant Administrator for Airports approved the Greater Peoria Regional Airport noise compatibility program.

A total of seventeen (17) measures were originally included in the Greater Peoria Regional Airport's recommended program. Of these measures four are listed as Noise Abatement Plan Measures, eleven are listed as Land Use Management Plan Measures and three are listed as Implementation Plan Measures. The FAA has approved all seventeen (17) of the measures in their entirety, although some of these measures had some provisions included with their approval.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Greater Peoria Regional Airport noise compatibility program is September 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7522. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its approval to the noise compatibility program for the Greater Peoria Regional Airport, effective September 23, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility

program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatable land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR (part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measure relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Greater Peoria Regional Airport submitted to the FAA on June 26, 1990, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at the Greater Peoria Regional Airport from September 28, 1988, through March 22, 1992. The Greater Peoria Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 12, 1991. Notice of this determination was published in the Federal Register on April 24, 1991.

The Greater Peoria Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 22, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The program proposed by the airport sponsor contained seventeen (17) measures for noise mitigation on and off the Greater Peoria Regional Airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective September 23, 1992.

Of the seventeen original measures submitted, four were listed as Noise Abatement Plan Measures. Three of the Noise Abatement Plan Measures: Informal Preferential Utilization of Runway 31 during Calm Winds Conditions; Informal preferential Utilization of Runway 22 in Conjunction with the Extension of Runway 4/22 to the Southwest; and a Departure procedure for all Turbojet Powered aircraft to fly Runway Heading until 3000' MSL (NA-1, NA-2, and NA-4) included a provision that implementation of the measures would be subject to required environmental studies and approvals prior to changes in the tower order/air traffic procedures being made. One of these measures (NA-4) was approved as a voluntary measure only. Another measure, Construction of Noise Berms along the Airport Perimeter (NA-3), was approved along with a provision that this measure has not been previously modelled to test its effectiveness although a preliminary analysis has been provided. Nine of the eleven Land Use Management Plan Measures were approved in their entirety: Adopt Building Code Amendments addressing Noise Level Reductions; Capital Improvement Program; Adopt Noise Contours as Part of the Peoria County Comprehensive Land Use Plan; Noise Disclosure Program; Environmental Project Review; Site Design; Special Districts; Federal Regulations; and Recommend Enactment of Airport Overlay Zoning District (LU-1, LU-2, LU-3, LU-4, LU-5, LU-7, LU-9, LU-10, and LU-11). For two Land Use Measures: Land Acquisition—Free Simple Purchase; and Sound Insulation (LU-6 and LU-8), it was noted there was a conflict between them as one calls for soundproofing within the same geographical area which the other one calls for land acquisition; however, this was resolved by the March 20, 1992 letter from the airport Authority which provided a more definitive description as to where each would apply. All three of the Implementation Measures were approved in their original form: Noise Monitoring and Contour Updating; Noise Complaint Response; and Plan Review and Evaluation; (IM-1, IM-2, and IM-3).

The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 260, Des Plaines, Illinois 60018

Office of Airport Manager, Greater Peoria Regional Airport, 1900 South Maxwell Road, Fourth Floor, Peoria, Illinois 61607

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706

Questions may be directed to the individual names above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, October 9, 1992.

**Robert F. DeRoeck,**

*Assistant Manager, Chicago Airports District Office, Great Lakes Region.*

[FR Doc. 92-25558 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Administration

**[Docket No. 92-56; Notice 1]**

### General Motors; Receipt of Petition for determination of inconsequential noncompliance

General Motors (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with the labeling requirements of CFR 571.105, Federal Motor Vehicles Safety Standard No. 105, "Hydraulic Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573. GM has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

In Standard No. 105, Paragraph S5.4.3 *Reservoir labeling* states that "[e]ach vehicle shall have a brake fluid warning statement that reads as follows, in letters at least one-eighth of an inch high: 'WARNING, Clean filler cap before removing, Use only—fluid from a sealed container.' (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g. 'DOT 3'). The lettering shall be * * * (b) [l]ocated so as to be visible by direct view, either on or within four inches of the brake fluid reservoir filler plug or cap."

During the model years 1984 through 1992, GM manufactured 239,392 'P' Series motor home chassis that may not comply with the labeling requirements of Standard No. 105, especially after motor home manufacturers add bodies. The brake fluid warning statement required by Standard No. 105 is present, but may not be "located so as to be visible by direct view" as required. The information is embossed on the brake fluid reservoir cap. The brake fluid reservoir itself is mounted under the floor of the chassis on the driver's side of the engine. An access hole is provided in the splash adjacent to the reservoir to allow the brake fluid level to be checked and replenished as necessary. However, depending on whether the chassis is placed on a hoist for service, the design of the completed motor home, and the diligence of the person attempting to read the warning statement, a varying number of words comprising the warning statement may be obscured from "direct view."

GM supports its petition for inconsequential noncompliance with the following:

Due to the nature of the vehicle and the location of the brake fluid reservoir, brake system service work on motor homes is typically performed by trained service personnel. The typical nature of motor home construction, including the chassis, is such that the brake fluid reservoir is not conspicuously located for casual inspection. Inspection and servicing of the brake fluid on the subject vehicles is best accomplished with the vehicle on a hoist, frequently with a wheel and/or body component removed, depending on the design of the final stage manufacturer's completed motor home. These factors contribute to the likelihood that this brake service will be performed by trained personnel. By virtue of their training and experience, such people are familiar with the information provided on the brake fluid warning statement. That is, service technicians know to avoid contaminating the inside of the reservoir, and to add the correct type of brake fluid when necessary.

The information contained on the brake fluid reservoir cap is also provided in the service manuals for the subject vehicles.

As required by FMVSS 105, sufficient brake fluid is provided to operate the brakes across the range from a new lining, fully retracted position to a fully worn, fully applied position. Since brake fluid is not consumed in use, the only necessity to check or add fluid arises from either a leak in the brake system or when the system has to be evacuated to replace worn brakes. Due to the relatively obscure location of the reservoir, the frequency at which the reservoir cap is removed for reasons other than these two is extremely low. With respect to these two events (system leak and worn out brakes), it is highly likely that whoever is capable of repairing the brake system or replacing the friction surfaces would use the correct fluid and know to avoid contamination.

The brake fluid warning statement contains two pieces of information. One of these is: "Use only (DOT designation) fluid from a sealed container." With regard to this information, we note that it is not possible to add brake fluid to the reservoir until after the reservoir cap has been removed. After the cap has been removed, the statement is "visible by direct view" given that the person servicing the brake fluid would be holding the reservoir cap which contains the statement. We believe this noncompliance is especially inconsequential to motor vehicle safety with respect to the portion of the warning statement that specifies the type of brake fluid that should be added.

The other piece of information contained in the warning statement is: "WARNING, Clean filler cap before removing." GM notes that this statement is unnecessary if the area around the reservoir cap is clean, and that the statement may be illegible to the extent that the area around the reservoir cap is dirty (because the dirt itself can conceal the statement). [GM believes] that this anomaly in the FMVSS 105 requirement is not of practical concern, however, since virtually anyone with the wherewithal to check and add brake fluid in these vehicles will also have sufficient understanding to avoid contaminating the inside of the reservoir.

GM has no record of any owner complaints related to the lack of viewability of the brake fluid warning statement, nor any complaints of brake fluid contamination in the subject vehicles.

Interested persons are invited to submit written data, views, and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below

Comment closing date: November 20, 1992.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: October 16, 1992.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 92-25538 Filed 10-20-92; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of calculation and interest.

**SUMMARY:** This notice advises the public of the interest rates for overpayments and underpayments of Customs duties. The rates are 6 percent for overpayments and 7 percent for underpayments for the quarter beginning October 1, 1992. This notice is being published for the convenience of the importing public and Customs personnel.

**EFFECTIVE DATE:** October 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** John V. Accetturo, Revenue Branch, National Finance Center, (317) 298-1308.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and are to fluctuate quarterly. The rates are determined during the first month of a calendar quarter and become effective for the following quarter.

The rates of interest for the period of October 1, 1992-December 31, 1992, are 6 percent for overpayments and 7 percent for underpayments. These rates will remain in effect through December 31, 1992, and are subject to change on January 1, 1993.

Dated: October 13, 1992.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

[FR Doc. 92-25459 Filed 10-20-92; 8:45 am]

BILLING CODE 4820-02-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirements Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of E.O. 10450. USIA is requesting approval for a three-year extension of an information collection entitled "Foreign Residence Data," under OMB control number 3116-0014. Estimated burden hours per response is thirty minutes.

**DATE:** Comments are due on or before November 20, 1992 (30 days from publication in **Federal Register**).

**COPIES:** Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Foreign Residence Data.

*Form Number:* IAP-10.

*Abstract:* The form serves as a supplement to SF-86, Security Investigation Data for Sensitive Position and is used to obtain names of persons currently in the United States, who have personal knowledge of the overseas activities of applicants for employment in the domestic or foreign service. The information is for security purposes only.

*Proposed Frequency of Responses:*

No. of Respondents—200

Recordkeeping Hours—0

Total Annual Burden—100.

Dated: October 14, 1992.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 92-25454 Filed 10-20-92; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 204
Wednesday, October 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, November 3, 1992, in Dallas, Texas. The meeting is open to the public and will be held at the North Texas Mail Processing Facility, 951 West Bethel Road, Coppell, Texas, in the Division Conference Centre. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, November 2, 1992, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

*November 3-8:30 a.m. (Open)*

1. Minutes of Previous Meeting, October 5-6, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Contract for Outside Audit Services. (Governor Bert Mackie.)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate.)
5. Southwest Area Office Report. (Hector A. Barraza, Customer Services; and Jeanette M. Cooper, Processing and Distributing.)
6. Capital Investment.
   a. Advanced Facer Canceler System (AFCS). (William J. Dowling, Vice President, Engineering Research and Development.)
7. Tentative Agenda for the November 30-December 1, 1992, meeting in Washington, DC.

**David F. Harris,**

*Secretary.*

[FR Doc. 92-25648 Filed 10-19-92; 1:44 pm]

BILLING CODE 7710-12-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [57 FR 47687 October 19, 1992.]

**STATUS:** Open/closed meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Thursday, October 15, 1992.

**CHANGE IN THE MEETING:** Time change/Additional meeting.

Open meeting scheduled for Wednesday, October 21, 1992, at 10:00 a.m., has been rescheduled for Wednesday, October 21, 1992, at 1:00 p.m.

The following items will be considered at a closed meeting on Thursday, October 22, 1992, at 4:00 p.m.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Opinions.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272-2100.

Dated: October 19, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92-25702 Filed 10-19-92; 4:00 p.m.]

BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 57, No. 204
Wednesday, October 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 34

### Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Job Training Partnership Act of 1982, As Amended (JTPA)

*Correction*

In proposed rule document 92-25149 beginning on page 47690 in the issue of Monday, October 19, 1992, make the following correction:

On page 47690, in the second column, in the **DATES:** paragraph, "[Enter date 15 days after publication date of proposed regulations]." should read "November 3, 1992."

BILLING CODE 1505-01-D

federal register

Wednesday
October 21, 1992

Part II

# Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-741

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities; Proposed Rule

**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**41 CFR Part 60-741**

**RIN 1215-AA76**

## Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** The proposal published today would revise the current regulations implementing section 503 of the Rehabilitation Act of 1973, as amended (section 503 or the act), which requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with handicaps. Today's proposal makes three general types of revisions to the section 503 regulations. First, the regulations' nondiscrimination provisions generally are conformed to the regulations published by the Equal Employment Opportunity Commission (EEOC) implementing title I of the Americans with Disabilities Act of 1990 (ADA). Second, the regulations incorporate recent amendments to section 503. Third, the regulations are revised to strengthen and clarify various existing provisions relating to affirmative action, recordkeeping, enforcement and other issues. Additionally, the proposal also proposes to partially withdraw a final rule published by the Department of Labor on December 30, 1980 (which was subsequently suspended) concerning section 503, Executive Order 11246 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. The withdrawal applies only to those provisions of the rule which pertain to section 503. Finally, today's proposal would withdraw in its entirety a proposed rule concerning section 503 which was also published by the Department on December 30, 1980.

**DATES:** Comments are invited from the public and other Federal agencies regarding both the proposal to revise the section 503 regulations and the proposal to partially withdraw the final rule of 1980. To be assured of consideration, comments must be in writing and must be received on or before November 20, 1992.

**ADDRESSES:** Comments should be sent to Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, room C3325, 200 Constitution Avenue, NW., Washington, DC 20210.

As a convenience to commenters, the Office of Federal Contract Compliance Programs will accept public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is 202-219-0195. Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Office of Federal Contract Compliance Programs at 202-219-9430.

Comments received will be available for public inspection at the Office of Federal Contract Compliance Programs, room C3325, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from November 4, 1992 until the Department publishes this rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call 202-219-9430 (voice), or 1-800-326-2577 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternative formats: Large print, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Federal Contract Compliance Programs by calling 202-219-9430 (voice) or 1-800-326-2577 (TDD).

**FOR FURTHER INFORMATION CONTACT:** Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., room C3325, Washington, DC 20210. Telephone: 202-219-9430 (voice), 1-800-326-2577 (TDD).

**SUPPLEMENTARY INFORMATION:**

### Overview of Proposed Rule

*1. Revision of Current Regulations*

Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) requires parties holding Government contracts and subcontracts in excess of $2500, in employing persons to carry out such contracts, to "take affirmative action to employ and advance in employment qualified individuals with handicaps." The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which has exclusive authority to enforce section 503, has published regulations implementing the act at 41 CFR part 60-741. These regulations, consistent with the statute's mandate, establish various affirmative action obligations for contractors (e.g., contractors are required to use effective practices to recruit qualified individuals with disabilities). The regulations require that contractors refrain from discriminating against qualified individuals with disabilities in all aspects of employment inasmuch as this prohibition is an indispensable component of affirmative action. Another central requirement of the current regulations is that contractors make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An accommodation is any change in the work environment (e.g., the modification or acquisition of equipment) or in the way a job is customarily performed (e.g., changes in work assignments) that enables an individual with a disability to enjoy equal employment opportunities.

Today's proposal is precipitated, in part, by the passage of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* The ADA, which was signed into law by President George Bush on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local governmental services, and telecommunications. Title I of the ADA, which is enforced by the Equal Employment Opportunity Commission (EEOC), prohibits private and State and local governmental employers from discriminating against qualified disabled individuals in all aspects of employment. (Title I became effective on July 26, 1992, with respect to employers with 25 or more employees; on July 26, 1994, this coverage is extended to employers with 15 or more employees.) The EEOC published regulations implementing title I of the ADA on July 26, 1991 (56 FR 35726). These regulations, consistent with congressional intent, are based on Federal regulations implementing section 504 of the Rehabilitation Act (29 U.S.C. 794) (section 504). Section 504 prohibits federally assisted and conducted programs from discriminating on the basis of disability. The ADA regulations establish comprehensive, detailed prohibitions regarding disability discrimination but do not address issues regarding affirmative action.

OFCCP has determined that it is now appropriate to conform its section 503

regulations to the EEOC's regulations. This action is intended to ensure that OFCCP and EEOC avoid the imposition of inconsistent legal standards when processing complaints of discrimination that fall within the overlapping jurisdiction of both section 503 and title I of the ADA, as is required by section 107(b) of the ADA. It would also have the result of providing considerably more guidance on the actions that constitute unlawful disability discrimination under section 503, as compared to the current regulations, which contain nondiscrimination provisions that are quite general in nature. However, the revisions do not significantly alter the substance of the existing prohibitions relating to discrimination. Accordingly, in general, this proposal does not affect the applicability of case law (administrative and judicial) developed under section 503.

Specifically, section 107(b) of the ADA requires that the OFCCP and EEOC establish procedures to ensure that administrative complaints filed under both laws are "dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards." On January 24, 1992, OFCCP and EEOC, pursuant to this mandate, published joint regulations which set forth procedures governing the processing of complaints that fall within the overlapping jurisdiction of both title I of the ADA and section 503. 57 FR 2960. The joint rule requires, among other things, that OFCCP (acting as EEOC's agent) process and resolve complaints of employment discrimination based on disability for purposes of title I of the ADA (as well as for section 503) when there is jurisdiction under both statutes. In doing so, OFCCP is required to apply legal standards which are consistent with the substantive legal standards applied under the ADA. It should be understood that OFCCP has no enforcement authority under the ADA beyond that specified in the joint rule.

There are, however, a number of differences between this proposal and EEOC's regulations, which are primarily of an editorial and technical nature. For instance, the proposal uses the term "contractor," which is specific to the section 503 program, rather than the analogous terms used by the ADA—"covered entity" and "employer." Significant differences between the two sets of regulations are discussed in detail in the Section-by-Section Analysis below.

Additionally, this proposed rule incorporates several recent legislative amendments to section 503. These amendments incorporated various exceptions to the definition of the term "individual with handicaps" (set out at 29 U.S.C. 706(8)), and thus established specified exclusions from coverage under section 503.

Further, the proposal clarifies and strengthens the current regulations' affirmative action provisions, and other provisions which are particularly significant with regard to OFCCP's efforts to monitor and enforce compliance with section 503. Specific changes are discussed in the Section-by-Section Analysis below.

*2. Partial Withdrawal of the 1980 Final Rule*

Today's proposed rule also proposes to partially withdraw a final rule published by OFCCP on December 30, 1980 (45 FR 86215; corrected at 46 FR 7332, January 23, 1981), and deferred indefinitely on August 25, 1981 (46 FR 42865). That 1980 rule would have revised the regulations at 41 CFR chapter 60 implementing section 503 of the Rehabilitation Act as well as two other laws enforced by OFCCP—Executive Order 11246 (30 FR 12319, September 28, 1965), as amended, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) (section 4212). Executive Order 11246 requires Government contractors and subcontractors to assure equal employment opportunity without regard to race, color, religion, sex and national origin. Section 4212 mandates similar requirements with regard to the employment of disabled veterans and veterans of the Vietnam era.

The December 30, 1980, rule was to take effect on January 29, 1981. On January 28, 1981, the Department of Labor published a notice (at 46 FR 9084) delaying the effective date of the final rule until April 29, 1981, to allow the Department time to review the regulation fully. The Department published three subsequent deferrals of the rule in 1981 in order to fully review the OFCCP regulations in accordance with Executive Order 12291, to permit consultation with interested groups, and to comply with intergovernmental review and coordination procedures. The Department again postponed the rule's effective date on August 25, 1981, until action could be taken on a proposed rule published on the same date (46 FR 42968). The August 25, 1981, proposal would have revised a number of provisions contained in the December 30, 1980, final rule as well as a number of provisions in 41 CFR chapter 60 which were not amended by that final rule. Final action has not been taken with respect to the proposed regulations issued on August 25, 1981, or, consequently, with respect to the 1980 final rule.

The substance of a number of the provisions contained in the 1980 final rule pertaining to the current section 503 regulations has been incorporated into today's proposal. However, OFCCP has determined not to go forward with some of the other revisions to the regulations. For instance, unlike today's proposal (and the current regulations), the 1980 final rule would have consolidated a number of the provisions of the section 503 regulations with common provisions implementing Executive Order 11246 and section 4212 into 41 CFR part 60–1, which currently sets out the general obligations under the Executive Order. Significant differences between this proposal, the current regulations and the 1980 final rule are discussed in detail in the Section-by-Section Analysis below. (Provisions contained in the 1980 final rule which are substantially similar to the parallel provisions in the current regulations are not separately discussed.) In order to avoid conflict between today's proposal and the 1980 final rule, OFCCP proposes to withdraw all provisions of the 1980 rule that pertain to section 503.

*3. Withdrawal of the 1980 Proposed Rule*

OFCCP also proposes to withdraw its proposed rule of December 30, 1980 (45 FR 86206) in its entirety. The primary purpose of the 1980 proposal was to conform the regulations implementing section 503 and section 4212 (which were patterned after those implementing section 503) to the employment provisions of the Department of Labor's regulations implementing section 504 of the Rehabilitation Act, which appear at 29 CFR part 32. The 1980 proposal also would have made a number of other revisions to the regulations implementing section 4212.

Because today's proposal conforms the section 503 regulations to those implementing title I of the ADA, it supersedes the 1980 proposal insofar as the 1980 proposal would conform section 503's regulations to those implementing section 504. Further, OFCCP is currently considering publishing a proposed rule to conform the section 4212 regulations to today's proposal and to implement other changes to these regulations. Such a rule would supersede the 1980 proposal as it applies to section 4212. Consequently, OFCCP believes that the

1980 proposed rule should be withdrawn in its entirety.

**Request for Comments**

Interested parties, including public and private disability organizations and employers, are invited to participate in this proposed rulemaking by submitting written views.

In addition to comments on the specific provisions of the proposed rule, OFCCP is interested in receiving public input on the more general topic of affirmative action under section 503. Section 503 expressly requires "affirmative action to employ and advance in employment qualified individuals with handicaps." The theory behind the affirmative action requirement is that those employers that benefit from public contract monies (i.e., government contractors and subcontractors) should be held to a greater obligation than are other employers. Disability law has evolved significantly in the years since the passage of section 503 and the issuance of OFCCP's implementing regulations. Concepts that in the past were associated with affirmative action, such as the notion of reasonable accommodation, are treated in the new ADA as nondiscrimination. Accordingly, OFCCP has begun to consider the meaning and interpretation of affirmative action in the disability arena for the 1990s and beyond. Comments are invited on all aspects of this subject, including:

(a) The appropriateness of the affirmative action obligations that would be imposed under these proposed rules and the extent to which they would be unduly burdensome (in contrast to the obligations imposed under the current regulations);

(b) Other affirmative action obligations that would be appropriate to impose on contractors and subcontractors that are subject to the written affirmative action program requirement; and

(c) Other affirmative action obligations that would be appropriate to impose on all contractors and subcontractors, irrespective of whether they meet the written affirmative action program thresholds.

**Section-by-Section Analysis**

This proposed rule consists of five subparts. Subpart A, "Preliminary Matters, Equal Opportunity Clause," explains the purpose, application and construction of the regulations in general and contains an extensive definitions section. The definitions section incorporates the definitions contained in the EEOC regulations implementing title I of the ADA which are relevant to the enforcement of section 503 and contains a number of revisions to the current definitions as well. Subpart A also contains provisions relating to coverage under section 503, and coverage exemptions and waivers, as well as the equal opportunity clause, which delineates a covered contractor's general duties under the act. Subpart B is a new subpart, which specifies the employment actions that will be deemed to constitute prohibited discrimination under section 503. In general, this subpart is identical to the parallel provisions in the EEOC regulations. Some deletions and modifications have been made with respect to the EEOC regulations to conform to section 503 policies and procedures. Subpart C, which governs the applicability of the affirmative action program requirement, reorganizes, clarifies and strengthens the affirmative action provisions in the current regulations. Most notably, the proposal raises the coverage threshold for the affirmative action program requirement. This subpart is not paralleled in the ADA regulations, which mandate nondiscrimination requirements only. As stated in proposed § 60–741.40(a), the requirements of subpart C apply only to Government contractors with 150 or more employees and a contract of $150,000 or more. All other subparts of the regulation are applicable to all contractors covered by section 503. Subpart D covers general enforcement and complaint procedures. In order to help ensure that OFCCP uses a consistent enforcement approach with that used under Executive Order 11246 (which OFCCP also enforces), this subpart incorporates a number of provisions from the regulations implementing the Executive Order. Further, subpart D's provisions regarding complaint procedures are conformed to the counterpart provisions contained in procedural regulations applicable to the ADA. Subpart E, Ancillary Matters, incorporates strengthened provisions on recordkeeping (e.g., it extends the current one-year record retention period to two years and makes the retention obligation applicable to a broader range of records), adds a mandatory notice posting requirement, and makes other revisions. Finally, the proposal contains two new appendices. One of the new appendices sets out guidance on positions engaged in carrying out a Government contract, which is an important concept in determining the employees to whom part 60–741 applies. The second new appendix sets out guidance on the duty to provide reasonable accommodation under the act. The appendix is consistent with the discussion of this issue contained in the Interpretative Guidance on Title I of the Americans with Disabilities Act which is set out as an appendix to the EEOC's ADA regulations.

Because this proposal generally conforms the section 503 nondiscrimination regulations to the EEOC's ADA regulations, the EEOC's Interpretative Guidance Appendix—which addresses the major provisions in the ADA regulations and explains the major concepts relating to disability rights—is equally applicable for purposes of this proposal. Accordingly, the following discussion cross-references the relevant portions of the EEOC appendix as set out in the **Federal Register** (but does not incorporate the appendix itself). The following analysis focuses on a comparison of today's proposal with the current section 503 regulation and the 1980 final rule.

This proposal uses a long form amending procedure in which all sections of the regulations are republished (except for those deleted in their entirety), including sections for which no changes are proposed and sections for which the only proposed change would be the section number. Use of the long form procedure ensures maximum clarity.

**Subpart A—Preliminary Matters, Equal Opportunity Clause**

*Section 60–741.1 Purpose, Applicability and Construction*

This section, which is derived from current § 60–741.1 ("Purpose and application"), is generally consistent with that section but contains a number of clarifying revisions. As reflected in its Purpose and application section (§ 60–1.1), the 1980 final rule would have integrated some of the section 503 regulations (e.g., its definitions provisions) into 41 CFR part 60–1 so as to consolidate general provisions which are applicable to both section 503 and Executive Order 11246. Correspondingly, § 60–1.1 of the 1980 final rule indicates that the rule would have made certain procedures (e.g., the show cause notice), which were previously applicable only to the Executive Order, applicable to section 503. In contrast to the 1980 final rule, today's proposal does not consolidate any of the section 503 regulations with those implementing the Executive Order. OFCCP believes that consolidation of provisions in this way is not practical at this time. However, like the 1980 final rule, today's proposal incorporates some of the Executive Order enforcement procedures.

including the show cause notice procedure.

Proposed paragraph (a), which states in part that section 503 requires contractors to take affirmative action with respect to the employment of qualified "individuals with disabilities," substitutes that term for "handicapped individual." (The Rehabilitation Act Amendments of 1986, Public Law 99–506, section 103(d)(2)(B), substituted the term "individual with handicaps" for the term "handicapped individual" throughout the statute, but that amendment was never incorporated into the section 503 regulations.) Indeed, the substitution in terms is made throughout the proposed rule. The substitution has been made because "individual with a disability" is the preferred term, and is used by the ADA and EEOC's regulations implementing title I of the ADA. The use of the term is not intended to affect the definition of the term itself.

Paragraph (b) of the proposal, which states that the regulations apply to contracts "in excess of $2500," conforms the monetary jurisdiction requirement stated in part 60–741 to that specified in section 503(a) of the Rehabilitation Act. Presently, § 60–741.1 provides that the regulations apply to Government contracts "for $2500 or more." The same type of conforming change is made throughout this proposal wherever appropriate. Further, paragraph (b) clarifies that contracts under which the Government is purchaser as well as those under which it is a seller are covered by the act. (See discussion regarding the definition of "Government contract" contained in § 60–741.2(i).) Additionally, this paragraph specifies that the act applies to contracts which are performed within the United States. Currently, the regulations specify that they have some limited extraterritorial application. OFCCP has determined that this proposed revision is required by the recent Supreme Court decision in *EEOC v. Aramco*, 111 S. Ct. 1227 (1991), holding that an analogous civil rights statute, title VII of the Civil Rights Act of 1964, does not apply abroad. (See discussion regarding paragraph (a)(4) of § 60–741.4 Coverage and waivers.) Finally, paragraph (b) provides that while compliance by a covered contractor with part 60–741 will not generally determine its compliance with other statutes, and that the reverse is also true, compliance with the regulations will satisfy the employment provisions of the Department of Labor's regulations implementing section 504 of the Rehabilitation Act which apply to recipients of financial assistance from the Department. This provision recognizes that the nondiscrimination protections that are established in proposed part 60–741 are at least as extensive as the analogous nondiscrimination provisions contained in those section 504 regulations.

The purpose and application section of the 1980 final rule (§ 60–741.1) states that part 60–741 applies to all Government contracts, "including Federal deposit and share insurance." Relatedly, the preamble to the 1980 final rule (45 FR 86218) states that OFCCP believes that Federal deposit and share insurance are contracts within the meaning of section 503. OFCCP continues to hold this view. However, the proposal does not incorporate a similar statement regarding the regulations' coverage of Federal deposit and share insurance. Upon reconsideration, OFCCP believes that it is unnecessary to single out this contractual arrangement from any other covered by the regulations. The proposal does not otherwise make reference to the precise subject matter of particular types of covered contracts.

Paragraph (c)(1), which states that the regulations do not apply lesser standards than those applied under title I of the ADA or the EEOC's implementing regulations for that title, is patterned after an analogous construction provision in the EEOC regulations, which provides (at § 1630.1(c)) a similar clarification with respect to section 503 (and other parts of title V of the Rehabilitation Act). See EEOC appendix, 56 FR at 35740. This paragraph also states that the interpretive guidance set out as an appendix to the EEOC's ADA regulations may be relied upon in interpreting the parallel provisions of this part. This provision reflects the fact that part 60–741, as revised, incorporates the large majority of the EEOC's nondiscrimination regulations without substantive change.

The first sentence of paragraph (c)(2), relationship to other laws—which states that part 60–741 does not invalidate or limit the protections or procedures of other laws that provide greater or equal protection for the rights of the disabled as compared to the protection afforded by those regulations—like paragraph (c)(1) above, parallels the analogous provision in the EEOC regulations (§ 1630.1(c)(2)). See EEOC appendix, 56 FR at 35740. The second sentence of paragraph (c)(2) is derived from § 1630.15(e) of the EEOC regulations, and provides that the contractor may take an action which would violate part 60–741 or refrain from taking an action required by that part where such action or omission is required or necessitated by another Federal law or regulation. See EEOC appendix, 56 FR at 35752. (Section 1630.15 sets out the defenses to an allegation of discrimination under the ADA. With the exception of this proposed section and proposed §§ 60–741.22 and 60–741.44(c)(3), which adopt § 1630.15(b)(2), OFCCP has determined not to adopt the other defenses contained in that section, because these defenses are clearly implicit from the wording of the discrimination prohibitions themselves.) This provision would permit the use of medical and safety standards or inquiries that are mandated or necessitated by other Federal laws or regulations. For instance, under this provision, contractors would be permitted to comply with requirements relating to the collection, analysis and disclosure of certain medical information which are imposed by the Mine Safety and Health Act (MSHA) and the Occupational Safety and Health Act (OSHA) (and related State laws which have been approved by the Occupational Safety and Health Administration). Some of these standards necessitate the review and analysis of workers' medical information by employers as well as by agency officials; such action by a contractor, absent this provision, might violate proposed § 60–741.23 on Medical examinations and inquiries.

*Section 60–741.2 Definitions*

The proposal substantially supplements the definitions section contained in the current section 503 regulations (§ 60–741.2) by incorporating a number of new terms and by modifying or deleting a number of existing terms. Most notably, the proposal incorporates into the definitions section relevant terms and definitions from the ADA definitions section (§ 1630.2) without substantive change. This was done to foster consistency between the section 503 and the ADA title I regulations and because many of the ADA definitions were derived from Rehabilitation Act case law, and therefore are consistent with OFCCP's interpretation of the terms under section 503. A number of other existing definitions (which are not affected by the incorporation of the ADA terms) also would be deleted or substantively revised. Moreover, in contrast to the existing rule, which sets out the defined terms in alphabetical order, the proposal arranges the definitions by subject matter, and sets out each defined term as a letter-designated paragraph. This change in

organization is intended to make the terms more easily understandable.

The following ADA title I regulatory definitions have been incorporated into this section: "individual with a disability," "physical or mental impairment," "substantially limits," "has a record of such impairment," "is regarded as having such an impairment," "qualified individual with a disability," "essential functions," "reasonable accommodation," "undue hardship," "qualification standards," and "direct threat."

A number of definitional terms that would have been made applicable to the regulations by the 1980 final rule (§ 60–1.3) are not adopted by today's proposal. These terms are "complaint," "administrative law judge" and "applicant." Upon reconsideration, OFCCP concludes that it is unnecessary to set out regulatory definitions for the first two terms because their meaning is a matter of common understanding. OFCCP has determined not to incorporate the definition for "applicant" because, as stated in the 1980 rule's preamble (at 45 FR 86217), it is unlikely that a precise workable definition of the term can be constructed, given the broad range of informal employment inquiries one could make. The 1980 rule's preamble stated that the definition of the term—"a person who is seeking employment or who has sought employment with a contractor"—was included in order to provide a fair standard for contractors to follow, but noted that disputes regarding particular factual circumstances would need to be resolved through conciliation and enforcement. OFCCP continues to believe that disputes regarding the issue will inevitably arise, but concludes that, because the above definition is so general, it would not provide contractors with any meaningful guidance; therefore, OFCCP declines to carry the definition forward.

*Section 60–741.2(a) "Act"*

The citation of authority contained in the current definition has been updated to incorporate recent statutory amendments.

*Section 60–741.2(b) "Equal Opportunity Clause"*

OFCCP proposes to substitute the term "equal opportunity clause" for the term "affirmative action and nondiscrimination clause"—which is used in the current regulations and refers to a specific set of obligations imposed under section 503 that must be set out in all contracts and subcontracts covered by the act (see proposed § 60–741.5). The purpose of this revision is to conform the terminology used in the section 503 regulations with that used in OFCCP's regulations implementing Executive Order 11246 (see 41 CFR part 60–1).

*Section 60–741.2(c) "Secretary"*

OFCCP proposes to revise the definition of "Secretary"—which refers to the Secretary of Labor in the current regulations—to include a designee of the Secretary. This revision would permit the Secretary to delegate authority under section 503 to the Deputy Secretary and other subordinates. The definition of the term "Assistant Secretary," which appears in the current regulations, is therefore no longer necessary, and thus is omitted in this proposal. Similarly, the definition of "rules, regulations and relevant orders of the Secretary of Labor" contained in the current regulations, which makes reference to the designee of the Secretary, is also omitted as unnecessary.

*Section 60–741.2(d) "Director"*

The proposed definition of "Director" is substantially identical to the current definition.

*Section 60–741.2(e) "Government"*

The proposed definition of this term is substantially identical to the current definition.

*Section 60–741.2(f) "United States"*

OFCCP proposes to revise the current definition of "United States" by deleting the reference contained therein to the Panama Canal Zone (which was ceded back to Panama under the terms of the Panama Canal Treaty) and by incorporating a reference to the Northern Mariana Islands (which became a territory of the United States in 1976).

*Section 60–741.2(g) "Recruiting and Training Agency"*

The proposal incorporates the current definition of this term without change.

*Section 60–741.2(h) "Contract"*

The proposed definition of "contract" revises the current regulatory definition—"any Government contract"—to subsume the term "subcontract." This approach is consistent with that used in the 1980 final rule (§ 60–1.3), and is intended to obviate the need to make a separate reference to "subcontract" each time "contract" is referenced to demonstrate that a particular provision applies to both contracts and subcontracts. Accordingly, the proposal generally references the term "subcontract" only when necessary to the context.

*Section 60–741.2(i) "Government Contract"*

The definition of "Government contract" is revised to clarify that covered contracts include those under which the Government is a seller of goods or services as well as those under which it is a purchaser. This change is a clarification intended to codify existing section 503 case law. *OFCCP* v. *Ozark Air Lines, Inc.*, 80–OFCCP–24 (Deputy Under Secretary for Employment Standards, June 30, 1986). Hence, the proposal substitutes a reference to contracts for the "purchase, sale or use" of goods or services for the existing reference to the "furnishing" of goods or services. The proposal also revises the definition to make clear, consistent with the language of the act, that only contracts regarding personal property (including those for the use of real property where such use constitutes personal property) and "nonpersonal" services are covered. Further, the proposed revision consolidates within the definition of "government contract" definitions for four terms referenced therein which are separately defined in the current regulations ("modification," "contracting agency," "person," and "construction"), and establishes a subdefinition for "personal property," which is not contained in the current regulations. (The definition of the term "agency" in the current regulations—"any contracting agency of the government"—has been deleted as unnecessary; references to "contracting agency" have been substituted in this proposal for references to "agency" wherever appropriate to the context.) The relevant subdefinitions are made applicable to the definition of "subcontract" at § 60–741.2(l) as well. Under the 1980 final rule, the definition of "Government contract" contains a clarification with regard to the coverage of personal property, which is similar to, but less precise than, the clarification contained in today's proposal.

*Section 60–741.2(j) "Contractor"*

Currently, the term is defined as a prime contractor or subcontractor; the proposal revises the definition to refer to a prime contractor or subcontractor "having a contract in excess of $2500." Because the term "contractor" encompasses the term "subcontractor," references to the latter term generally have been deleted from the regulations by the proposal.

*Section 60–741.2(k) "Prime Contractor"*

The proposal revises the definition of "prime contractor" to incorporate a reference to persons holding a contract "in excess of $2500."

*Section 60–741.2(l) "Subcontract"*

The proposal incorporates changes which conform the current definition of "subcontract" to the proposed definition of "Government contract" (§ 60–741.2(i)); that is, as revised, the definition references agreements for the "purchase, sale or use of personal property or nonpersonal services."

*Section 60–741.2(m) "Subcontractor"*

The proposed definition is substantially identical to the current regulatory definition. The 1980 final rule's definition contains a subdefinition of "First-tier subcontractor." OFCCP no longer believes that such a subdefinition is necessary.

*Section 60–741.2(n) "Individual With a Disability"*

As discussed above, today's proposal substitutes the term "individual with a disability" for the term "handicapped individual," which is used in the current regulations. As stated in paragraph (n)(2), such substitution in terminology does not alter the definition of the term itself. (However, the proposed definition does not contain the reference contained in the current regulations to the concept of a "substantial limitation." See discussion regarding § 60–741.2(q) below.) The definition of the term "individual with a disability" is identical to the ADA title I regulatory definition of "disability" (§ 1630.2(g)), and therefore the ADA appendix discussion of the latter term may be relied upon in interpreting the former. See ADA appendix at p. 35740.

*Section 60–741.2(o) "Physical or Mental Impairment"*

Currently, the regulations contain no definition of the term "physical or mental impairment." In practice, OFCCP had adopted the interpretation of the term established in *E.E. Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088, 1097 (D. Hi. 1980): "any condition which weakens, diminishes, restricts, or otherwise damages an individual's health or physical or mental activity." Today's proposal incorporates the ADA definition of that term at § 1630.2(h) (see ADA appendix at pp. 35740–41), which is conceptually similar to the definition in *E.E Black*, but considerably more precise and detailed.

*Section 60–741.2(p) "Major Life Activities"*

The proposal, which states that the term means such functions as caring for oneself, performing manual tasks and working, adopts the definition of the term contained in the ADA title I regulations at § 1630.2(i). See ADA appendix at p. 35741. The current regulations contain a similar definition in an appendix to the regulations (Appendix A), rather than the body of the regulations. In contrast to the proposal, the definition contained in the appendix states that for the purpose of section 503 primary attention is given to life activities that affect employability. As discussed in relation to proposed paragraph (q), under the proposal an impairment's impact on the major life activity of working is considered separately from its impact on other activities.

*Section 60–741.2(q) "Substantially Limits"*

The proposal adopts a definition of "substantially limits" that is similar to the ADA definition at § 1630.2(j). See ADA appendix at pp. 35741–42. The present definition of "substantially limits," which is set out in appendix A, states that the term means the degree that an impairment affects employability, and that one who is likely to experience difficulty in securing employment would be considered substantially limited. The proposal, which is much more detailed, generally defines the term as the inability to perform, or a significant restriction in performing, a major life activity "that is within the normal range of abilities of persons in the general population" (without regard to the impact on one's employability). It also lists a number of factors which should be considered in determining whether one is substantially limited. The proposal also contains a subdefinition of the term with respect to the major life activity of working which includes factors that should be considered (along with those listed earlier in the definition) in the determination. It is not necessary to consider the impact of the individual's impairment on the major life activity of working if the impairment substantially limits another major life activity.

The only difference between the proposal and the ADA's definition and subdefinition is that ADA's regulations use the term "average person" rather than the phrase "within the normal range of abilities of persons in the general population." The difference in language is intended for clarity only; OFCCP intends to apply the definition and subdefinition in the same manner as they are applied under the ADA.

*Section 60–741.2(r) "Has a Record of Such Impairment"*

The definition from the ADA regulations (at § 1630.2(k)) is adopted. See ADA appendix at p. 35742. Appendix A of the current section 503 regulations contains a similar, but more detailed, definition for the phrase. The effect of the proposed definition and that of the definition contained in the section 503 appendix should be the same.

*Section 60–741.2(s) "Is Regarded as Having Such an Impairment"*

The ADA definition (at § 1630.2(1)) is adopted. See ADA appendix at pp. 35742–43. Appendix A of the current regulations contains a substantially similar definition of the term. The effect of the proposed definition and that of the definition contained in current Appendix A should be the same.

*Section 60–741.2(t) "Qualified Individual With a Disability"*

Currently, the regulations define the term as one who is capable of performing a particular job with reasonable accommodation. The proposal incorporates the ADA definition of the term at § 1630.2(m) (see ADA appendix at p. 35743), which specifies that one is "qualified" if he or she satisfies the job-related requirements of the position held or sought, and can perform the essential functions of the position with or without reasonable accommodation. It should be noted that, with respect to the application process, an applicant will be deemed qualified if he or she meets eligibility requirements applicable to that process with or without reasonable accommodation.

*Section 60–741.2(u) "Essential Functions"*

The proposal incorporates the ADA definition of "essential functions" (§ 1630.2(n)), which states that the term refers to the fundamental job duties, but not marginal functions, of the position in issue. See ADA appendix at pp. 35743–44. The current regulations do not contain an analogous definition, but under current section 503 policy the concept is relevant to the issue of qualifications, reasonable accommodation and business necessity. See *OFCCP* v. *Texas Industries, Inc.*, 47 FEP Cases 18 (U.S. DOL 1988).

*Section 60–741.2(v) "Reasonable Accommodation"*

The proposal incorporates a definition which is almost identical to the ADA definition at § 1630.2(o) (See EEOC appendix at p. 35744); the current section 503 regulations do not contain a definition of the term. The definition states that a reasonable accommodation is any change in the work environment or the way job duties are customarily performed that enables disabled persons to perform the essential functions of the job in issue, or that ensures equal opportunity for the disabled with respect to the application process or the enjoyment of benefits and privileges of employment. The change is proposed in the interest of regulatory consistency, but does not represent a change in OFCCP policy.

The only difference between the proposed definition and the ADA definition is that paragraph (v)(1)(i) of the proposal refers to modifications to the job application process that enable "an applicant" with a disability to be considered for a position, while the ADA definition uses the term "qualified applicant" in this context. The proposal's omission of the word "qualified" is intended to ensure that contractors do not draw the erroneous inference that their duty to provide a reasonable accommodation with respect to disabled applicants is limited to those who can demonstrate that they are qualified to perform the job in issue. Disabled applicants must be provided a reasonable accommodation if they are qualified with respect to the application process (e.g., if they present themselves at the correct location and time to fill out an application). This is the same approach used under the ADA's definition; the difference in language is intended for clarity only. Appendix B should be consulted for general guidance on the duty to provide reasonable accommodation.

*Section 60–741.2(w) "Undue Hardship"*

The proposal adopts the ADA definition (§ 1630.2(p)), which provides that "undue hardship" means a significant difficulty or expense related to the provision of an accommodation, as determined in light of specific enumerated factors, including the net cost of the accommodation (after deducting available outside funding) and the overall financial resources of the facility providing the accommodation. See EEOC appendix at pp. 35744–45. Although "undue hardship" is not defined in the current regulations, there is a reference to the concept in current § 60–741.6(d). That section, similar to the proposal, states that a contractor must make a reasonable accommodation for a disabled individual, unless such accommodation would impose an undue hardship, and that the extent of the accommodation duty is determined based on such factors as business necessity and financial cost. Thus, the proposed definition is consistent with current OFCCP requirements.

*Section 60–741.2(x) "Qualification Standards"*

The proposal adopts the ADA definition (§ 1630.2(q)), which states that the term means personal and professional attributes established by the employer which an individual must meet in order to be eligible for the position in issue. (The EEOC appendix does not contain a discussion of this definition.) The current regulations do not contain an analogous definition, but the proposed definition does not represent a change in current OFCCP policy.

*Section 60–741.2(y) "Direct Threat"*

The EEOC definition (§ 1630.2(r)) is incorporated. See EEOC appendix at p. 35745. The definition states that a "direct threat" is a significant safety or health risk—as determined based on an individualized assessment in light of specified factors—that cannot be eliminated or reduced by reasonable accommodation. The factors considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of the potential harm. OFCCP's current regulations do not contain a parallel definition. However, OFCCP has relied on essentially the same concept when applying its current regulations. Section 60.741.6(c)(2) of the current regulations requires that when a contractor uses a job qualification requirement which tends to screen out disabled persons, the contractor shall demonstrate that such requirement is consistent with business necessity and safe performance of the job in issue. In determining whether a particular health or safety risk is sufficient to justify, consistent with the requirements of that section, the exclusion of a disabled individual from an employment opportunity, OFCCP currently considers essentially the same factors (the likelihood, seriousness and imminence of potential injury associated with the disability) as are set out by the proposal. See *E.E. Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088, 1104 (D. Hi. 1980); *OFCCP* v. *Texas Industries, Inc.*, 47 FEP Cases 18, 25 (U.S. DOL 1988). In order to satisfy the above regulatory standards, OFCCP requires a contractor to demonstrate, based on an individualized assessment of the individual's work and medical history, that the disability would pose a risk of harm comparable to that set out in the EEOC definition. See *Texas Industries, supra*, 47 FEP Cases at 27, citing *Mantolete* v. *Bolger*, 767 F.2d 1416, 1422 (9th Cir. 1985)

*Section 60–741.3 Exceptions to the Definitions of "Individual With a Disability" and "Qualified Individual With a Disability"*

The provisions in paragraph (a) (with the exception of subparagraph (4)(ii)) are derived from, and are substantially identical to, amendments to the definition section of the Rehabilitation Act (section 7, 29 U.S.C. 706) made by section 512 of the ADA. In general, the statutory amendments were intended to conform the Rehabilitation Act's coverage provisions regarding individuals who engage in the current illegal use of drugs to those under title I of the ADA. See the ADA House Conference Report, H.R. Rep. 596, 101st Cong. 2d Sess. 88–89 (1990). Accordingly, the discussion in EEOC's appendix (at pp. 35745–46) relating to §§ 1630.3(a)–(c), which implement these ADA coverage provisions, is equally applicable for purposes of proposed paragraph (a). Therefore, this appendix discussion should be considered in conjunction with the discussion of proposed paragraph (a) that appears below.

Proposed paragraph (a)(1) is derived from an amendment to the definition of "individual with handicaps" which provides that the term does not include a person "who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use." Paragraph (a)(1) permits a contractor to deny employment opportunities to persons because they are currently engaging in the illegal use of drugs. It should be noted that if a drug user also has a disability that is protected under section 503, to the extent that the adverse action is taken on the basis of the disability (rather than on the basis of the illegal use of drugs), the contractor must comply with the act and may not unjustly discriminate. However, if the action is taken on the basis of the current illegal use of drugs, the disabled person does not have protection simply by virtue of his or her disability. H.R. Rep. No. 485 Part 2 (ADA House Education and Labor Committee Report), 101st Cong., 2d Sess. 77 (1990).

The amendment significantly altered the existing coverage provision for drug users under section 503, which was

established pursuant to a 1978 amendment to the Rehabilitation Act (Public Law 95–602) that was never incorporated into the section 503 regulations. The 1978 amendment revised section 7 of the act to exclude from the definition of "handicapped individual" only drug abusers whose current use of drugs prevents performance of the job in question or poses a direct threat to property or safety. (The proviso also excludes from the definition alcoholics whose current use of alcohol has such an effect.)

Paragraphs (a) (2) and (3), which provide definitions for the terms "drug" and "illegal use of drugs," respectively, are taken verbatim from an amendment by section 512(b) of the ADA to the Rehabilitation Act's definition section. Paragraph (a)(4)(i), which also is derived from an amendment to the definition of "individual with handicaps" by section 512(a) of the ADA, clarifies the scope of the exclusion from section 503 coverage set out in paragraph (a)(1). It provides that the exclusion does not apply to a person who has successfully completed drug rehabilitation or is participating in a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or to a person who is erroneously regarded as engaging in current illegal drug use, but is in fact not using drugs.

Proposed paragraph (a)(4)(ii), which is not derived from the ADA, clarifies that an individual is not necessarily protected by section 503 simply because he or she is a recovered or recovering drug abuser or is erroneously regarded as a current drug user. Such an individual must still satisfy the requirements for protection as a "qualified individual with a disability." An individual erroneously regarded as illegally using drugs, for example, would have to show that he or she was regarded as a drug addict in order to demonstrate that he or she meets the definition of a "qualified individual with a disability."

Paragraph (a)(5) is intended to permit the contractor to seek reasonable assurances, through drug testing and other means, that a recovered or recovering drug user is no longer engaging in the illegal use of drugs.

Paragraph (b)(1) establishes an exclusion from the act's protection with respect to alcoholics whose current use of alcohol prevents performance of the essential functions of the job in issue or which would pose a direct threat to property or to health or safety. This exclusionary proviso is derived from an amendment to the Rehabilitation Act definition of "individual with handicaps" by section 512(a) of the ADA. Some editorial changes have been made to conform the provision to the language used by the proposed definitions of "qualified individual with a disability" (see § 60–741.2(t)) and "direct threat" (see § 60–741.2(y)), which in turn, are derived from the ADA regulations. It should be noted that this amendment did not substantively alter section 503's coverage of alcoholics. As noted above, the definition of "individual with handicaps" had been amended in 1978 to incorporate a substantially identical proviso which applies to both alcoholics and drug abusers; that proviso was never incorporated into the section 503 regulations. The ADA amendment to the Rehabilitation Act's coverage of alcoholics adopts a substantially similar proviso that does not make reference to drug abusers.

Paragraph (b)(2) clarifies that the contractor has the same obligation to provide a reasonable accommodation for the mental and physical limitations of an alcoholic—in an effort to enable the individual to perform the essential functions of the job in issue or to eliminate or reduce the direct threat posed by an alcoholic's current use of alcohol—as the contractor has with respect to any other disabling condition. OFCCP believes that this provision is necessary to clarify that paragraph (b)(1) does not create a blanket exclusion for all alcoholics whose condition presents a direct threat.

The purpose of paragraph (c)(1) is to incorporate into the regulations a 1988 amendment to the definition of "individual with handicaps" pertaining to contagious diseases which is analogous to the amendment regarding alcoholics discussed above. The amendment, which was enacted as part of the Civil Rights Restoration Act (Public Law 100–259), clarifies that persons with contagious diseases or infections may be covered by the Rehabilitation Act, provided that such condition does not pose a significant threat to health or safety or prevent performance of the job in issue. The proposal includes editorial changes to the language of the amendment similar to those made in connection with paragraph (b)(1) above.

Paragraph (c)(2) sets out a clarification regarding a contractor's duty to provide reasonable accommodation for a person disabled by a currently contagious disease or infection which is analogous to paragraph (b)(2) above.

Paragraph (d) provides that transvestism is not a disability within the meaning of the Rehabilitation Act. The purpose of this paragraph is to implement a provision in the Fair Housing Act Amendments of 1988 (Section 6(b)(3), Public Law 100–430, 42 U.S.C. 3602 note) which provides that, for purposes of the Rehabilitation Act, "neither the term 'individual with handicaps' nor the term 'handicap' shall apply to an individual solely because that individual is a transvestite."

The EEOC regulations exclude certain specified conditions from coverage under the ADA, e.g., transsexualism, compulsive gambling and kleptomania; and clarify that homosexuality and bisexuality are not impairments under the ADA. See the EEOC regulations at §§ 1630.3(d) and (e). This proposal does not contain parallel provisions. The provisions contained in the ADA regulations are mandated by section 511 of the ADA, and are not applicable to section 503.

*Section 60–741.4 Coverage and Waivers*

Proposed paragraph (a)(1), which sets out the general monetary jurisdiction requirement, is derived from existing § 60–741.3(a)(1), and is substantially identical to that section.

Proposed paragraph (a)(2), which is not paralleled in the current regulations, provides that part 60–741 applies only to positions that are engaged in carrying out a Government contract, and requires the contractor to make a determination as to which of its positions are covered by the regulations and establishes criteria for the contractor to apply in making that determination. The purpose of this paragraph is to more closely conform the regulations to the general statement of coverage in section 503(a) of the Rehabilitation Act—which provides, in relevant part, that the act's affirmative action requirements apply only insofar as the contractor is employing persons to carry out a Government contract. The proposal replaces current § 60–741.3(a)(5), which establishes a procedure under which the contractor may seek a waiver from OFCCP with respect to the application of the regulations to the contractor's facilities that are not connected with a Government contract. Specifically, that waiver provision provides that, upon the request of the contractor, the Director may waive the requirements of the regulations with respect to any of the contractor's "facilities which he or she finds to be in all respects separate and distinct from activities * * * related to the performance of the contract or subcontract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act."

The proposal was precipitated by a recent Federal district court decision which invalidated the waiver provision. *Washington Metropolitan Transit Authority (WMATA)* v. *DeArment*, 55 EPD ¶40,507 (D.D.C. 1991). The court ruled that the waiver provision is inconsistent with the express language of section 503 that only those employees who "carry out" Federal contracts are covered by the act. The court concluded that the waiver provision impermissibly extends coverage under the act to all of a contractor's employees unless the contractor has sought and obtained a waiver. *Contra E.E. Black, Ltd.* v. *Marshall*, 497 F.Supp. 1088, 1097 (D. Hi. 1980).

The proposal's provision regarding which employees are engaged in carrying out the contract contains two prongs. Under paragraph (a)(2)(i)(A) ("prong A"), a position is engaged in carrying out the contract if its duties include work that is necessary to or that facilitates performance of the contract or a provision of the contract. The inclusion of work that is necessary to or that facilitates contract performance, even if not directly required by an express contract term, is intended to reflect the practical reality that performance of a contract generally requires the cooperation of a variety of individuals engaged in auxiliary and related functions beyond direct production of the goods or provision of the services that are the object of the contract.

To give one example, a contract for production and sale of goods to the Government commonly requires the work not only of the production employees assembling the goods, but also of those engaged in functions such as repairing the machinery used in producing the goods; maintaining the plant; assuring quality control and security; storing the goods after production; delivering them to the Government; hiring, paying, and providing personnel services for the employees engaged in contract-related work; keeping financial and accounting records; and supervising or managing the employees engaged in such tasks. This list is not intended to be exhaustive, but only to illustrate that a variety of functions may commonly be involved in carrying out a contract.

Whether a particular position is engaged in carrying out the contract under prong (A) depends on the facts. In each case, the question is whether the duties of the position include work that contributes to or furthers the performance of the contract, or work whose omission would impede performance. Guidance as the application of this standard is given in appendix A.

Proposed paragraph (a)(2)(i)(B) ("prong B") contains an alternative formulation, under which a position generally will be covered if the cost of the position is allocable as either a direct or indirect cost of the contract under the cost principles set forth in the Federal Acquisition Regulation (FAR). The basic premise of the alternative formulation in paragraph (a)(2)(i)(B) is that the Government should be able to cover under section 503 any position that it pays for, in whole or in part, under the cost principles of the FAR. That is, if a contractor is receiving from the Government reimbursement for the costs of a position, then it is reasonable to conclude that the position is engaged in "carrying out" a Government contract.

Under the cost allocation principle set forth in FAR 31.201–4, a cost is allocable to a particular Government contract if it (1) is incurred specifically for the contract; (2) benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or (3) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown. A "direct cost" is any cost that is identified specifically with a particular final cost objective (such as a particular contract) and may be charged directly against that contract. FAR 31.202(a). An "indirect cost" is any cost not directly identified with a single final cost objective, but is identified with two or more final cost objectives, or an intermediate cost objective. Indirect costs are accumulated by logical cost groupings, and are then allocated among the final cost objectives included in the groupings on the basis of the benefits accruing to the objectives. FAR 31.203.

Under prong B of the proposal, a position is engaged in carrying out the contract if the cost of the position is allocable in whole or in part as a direct cost of the contract, or if a more than de minimis portion of the cost of the position is allocable as an indirect cost to Government contracts. If less than 2% of the cost of the position is allocable as an indirect cost to Government contracts, this is considered de minimis, and the position is not covered by virtue of prong B.

Although the terminology employed is different, prongs A and B are conceptually similar. Both recognize that carrying out a contract generally requires the work of a variety of employees engaged in different functions, not all of whom work solely or directly on the contract. Although the prongs are stated as alternative formulations, either one of which if satisfied will result in coverage, it is expected that generally the same employees who are included under one would be included under the other.

Two formulations are included because although records already kept pursuant to the FAR cost principles will frequently provide a convenient and useful source of information regarding which positions are engaged in carrying out a contract, not all contractors will have such records. The FAR's cost principles are limited in their application to the pricing of fixed-price contracts to situations where (a) a cost analysis is to be performed or (b) a fixed price contract clause requires the determination or negotiation of costs. See FAR 31.102. In addition, the principles are required to be incorporated in all contracts with commercial organizations as a basis for:

(1) Determining reimbursable costs under cost-reimbursement and other flexibly priced contracts;

(2) Negotiating indirect cost rates;

(3) Negotiating cost settlements of terminated contracts;

(4) Negotiating price revisions of fixed-price incentive contracts and redetermination of price-redeterminable contracts; and

(5) Pricing changes and other modifications of firm-fixed-price contracts.

See FAR 31.103.

Paragraph (a)(2)(ii) establishes a rule whereby all of the contractor's positions or those within a particular division or establishment are deemed to carry out a Government contract if the contractor, establishment or division is devoted exclusively to Government contract work.

Paragraph (a)(2)(iii)(A) provides that the contractor (whether or not subject to the affirmative action program requirements of subpart B) is required to determine which of its positions carry out a Government contract and make a record of this determination. Such a determination is necessary in order to clearly define, for the benefit of both the contractor and OFCCP, the scope of the contractor's affirmative action and nondiscrimination obligations under the regulations. The requirement is imposed on the contractor, rather than OFCCP, because the contractor is in much better position to make a reasoned determination in this regard; moreover, OFCCP's limited resources would not permit its involvement in this process.

Paragraph (a)(2)(iii)(B) requires a contractor covered by the regulations' affirmative action program (AAP) requirements to identify in its AAP for each establishment which positions are and are not covered by the regulations and to explain the basis for that determination. This paragraph further provides that a contractor is not obligated to prepare an AAP for an establishment where it properly determines that no positions at the establishment are covered. The documentation required by this paragraph is intended to fulfill the same purpose as that required under paragraph (a)(2)(iii)(A); additional requirements not contained in that paragraph are imposed only on contractors with an AAP obligation because generally they are better able to absorb the associated costs.

Paragraph (a)(2)(iii)(C) provides that where a contractor fails to determine, as required by § 60–741.4(a)(2), which of its positions carry out a Government contract, the regulations shall apply to all of its positions until it makes such a determination. The intent of this provision is to prevent the contractor from circumventing its obligations under the act by simply failing to determine which of its positions are covered. In the case where the contractor has made a determination of coverage pursuant to § 60–741.4(a)(2), but OFCCP finds such determination to be erroneous, OFCCP may find the contractor in violation of the regulations. OFCCP's finding in this regard will be based on, among other factors, whether the contractor's determination was reasonable.

OFCCP anticipates that this revision will increase paperwork burdens on regulated employers, as compared with the burdens that existed prior to the *WMATA* decision. Pursuant to this revision, service and supply contractors would have to make coverage determinations at a maximum of approximately 89,093 establishments (the estimated total number of such establishments that perform Government contracts covered under section 503) for an estimated 24 million positions. The proposal allows contractors a great deal of flexibility in making and recording coverage determinations. However, making such determinations will require some effort, particularly because a contractor (whether single or multi-establishment) may have more than one Federal contract at any given time, and may also be anticipating additional contract awards. In addition, it is conceivable that additional contracts will involve a different segment of the contractor's work force, and will require coverage determinations to be made at different times throughout the year. OFCCP estimates that it will take the average supply and service contractor about four hours per establishment to determine and record which of its positions (such contractors have an average of 250 positions) are "carrying out" a Federal contract. It is estimated that contractors are involved in an average of three contracts per establishment per year. Thus, the requirement that contractors make coverage determinations would result in a gross increase in paperwork burden hours for supply and service contractors of roughly 1.1 million.

OFCCP estimates that paperwork burden hours for construction contractors will be smaller as a result of the revision because positions carrying out a Federal construction project are more readily identifiable. At most, OFCCP estimates that it will take the average construction contractor 15 minutes to determine and make a record of covered positions. For the approximate 100,000 construction contractors in the covered universe, this would yield a 25,000 burden hour increase.

Some establishments will no longer be subject to section 503 AAP requirements by virtue of the *WMATA* decision, because the contractor is not employing persons to carry out the contract at such establishments. This change is likely to result in only a marginal reduction in burden hours for such establishments, however, because they would remain subject to virtually identical AAP requirements by virtue of another law. All contractors covered under the section 503 written AAP obligation are required to prepare a similar written AAP for all their establishments pursuant to the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). VEVRRA, which applies to Government contractors holding a contract valued at $10,000 or more, establishes protections for disabled veterans which parallel those provided under section 503. The protections established under VEVRAA, however, unquestionably apply to a contractor's entire work force, not just the parts that are carrying out the Government contract. Under the regulations implementing VEVRAA, a contractor with a contract of $50,000 or more and 50 or more employees is required to develop a written AAP—the required contents of which substantially parallel those required for a section 503 AAP. (OFCCP is planning to propose a revision to the VEVRAA regulations to conform its AAP threshold levels to those proposed under section 503's regulations (see 57 16961 (April 27, 1992).) Thus, OFCCP anticipates that there would be only a marginal reduction in paperwork burden hours for those contractors whose establishments would be exempted from the obligation to prepare a written AAP under the proposal.

Comments are expressly sought on the proposal relating to positions engaged in carrying out a contract. OFCCP is particularly interested in the public's views on the following questions:

(1) To what extent, if any, should positions which involve work that is necessary to, or that facilitates, performance of a Government contract (as distinguished from those which involve work that fulfills an express contractual term) be covered by the regulations?

(2) Is the reference to the Federal Acquisition Regulation useful in determining which positions are engaged in carrying out the contract?

(3) Should a distinction be made between direct cost positions and indirect cost positions?

(4) Should there be a de minimis test? If so, is 2% an appropriate level?

(5) What types of burdens are likely to result from the requirement that contractors determine which positions are engaged in carrying out the contract (with respect to both positions that perform work that fulfills a contractual obligation, and those which perform work that is necessary to, or that facilitates, performance of the contract)?

(6) How can these burdens be kept to a minimum? [1] Proposed paragraph (a)(3), which relates to contracts for indefinite quantities, is derived from existing § 60–741.3(a)(2), and is substantially identical to that section.

Proposed paragraph (a)(4), which provides that the regulations apply only to employment within the United States, represents a significant departure from the current regulations. Existing § 60–741.4(a)(3) waives the application of part

[1] The Rehabilitation Act Amendments of 1992 (H.R. 5482) would amend section 503 to, *inter alia*, strike the phrase "in employing persons to carry out such contract," codify OFCCP's existing regulation (41 CFR 60–741.3(a)(5)) under which a contractor may seek a waiver with respect to facilities that are not connected with a Government contract, and require the Secretary to promulgate regulations setting forth the standards used for granting a waiver. The Rehabilitation Act Amendments were passed by the House of Representatives on October 2, 1992, and by the Senate on October 5, 1992. If they are ultimately signed into law, OFCCP intends to publish a supplementary NPRM proposing the regulatory changes required by the legislation.

60–741 with respect to work that is performed outside the United States by employees who were not recruited within the United States. Thus, by implication, the current regulations make part 60–741 applicable to work performed abroad by employees recruited in the United States. Paragraph (4) is proposed in response to the Supreme Court's decision in *EEOC* v. *Aramco*, 111 S. Ct. 1227 (1991). In *Aramco*, the Court held that title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e *et seq.*], which is similar to section 503 in all material respects, does not apply to United States citizens employed abroad by United States employers. In reaching this conclusion, the Court observed that there is a well-established presumption that Congress intends legislation to apply only within United States territory, noting that this presumption protects against unintended clashes between United States laws and those of other nations which could result in international discord. The Court ruled that this presumption can only be overcome by a clearly expressed affirmative congressional intent to the contrary, and that there is no such intent associated with title VII. OFCCP concludes that the Court's analysis applies with equal force to section 503, which also does not contain the requisite statement of congressional intent regarding extraterritorial application. OFCCP recognizes that the Civil Rights Act of 1991 (Pub. L. 102–166, 105 Stat. 1071), section 109(a), amended title VII to include within its protection United States citizens who work overseas for United States businesses, and thus negated the effect of the holding in *Aramco*. (The Civil Rights Act made a similar amendment to the ADA.) However, the amendment did not affect section 503.

Proposed paragraph (a)(5) is identical to current § 60–741.3(a)(4).

For the sake of clarity, proposed paragraph (b) consolidates current §§ 60–741.3(b) (1) and (3), which relate to waivers and withdrawal of waivers, respectively. The portion of the paragraph relating to the grant of waivers has been revised to permit the Director of OFCCP to unilaterally grant waivers in the national interest. Currently, § 60–741.3(b)(1) permits the head of an agency to grant such a waiver with the concurrence of the Director. When this provision was issued, enforcement responsibilities under the act were carried out by individual Federal compliance agencies as well as by OFCCP. During this period, the granting of waivers was coordinated between these compliance agencies and OFCCP. All compliance responsibility was consolidated into OFCCP in 1978; accordingly, such a requirement is no longer appropriate.

Proposed paragraph (b)(2), which relates to national security waivers, is substantially identical to current § 60–741.3(b)(2).

*Section 60–741.5 Equal Opportunity Clause*

This section is derived from current § 60–741.4. The current heading for the section, "Affirmative action clause," has been revised to read "Equal opportunity clause," in order to conform it with the analogous provision contained in the regulations implementing Executive Order 11246 (41 CFR 60–1.4). (Likewise, the heading for the clause itself has been revised to reference "Equal Opportunity" rather than "Affirmative Action.") With respect to paragraph (a)(1) (current paragraph (1)), the proposal expands and reorganizes the listing of the prohibited types of disability discrimination to conform to the parallel provisions in the EEOC ADA regulations (§ 1630.4). Proposed paragraphs (a)(2) through (a)(6) are substantially identical to current paragraphs (b) through (f), respectively, with the exception of a number of minor editorial changes. For instance, proposed paragraph (a)(5) (current paragraph (e)) makes reference to a "labor organization" rather than to a "labor union."

Further, current §§ 60–741.20 to 60–741.24 have been consolidated (without substantive change) into this section as paragraphs (b)–(f), respectively. These provisions, which relate to the equal opportunity clause, are more logically included here than as separate sections. Proposed paragraph (d) provides that the contractor may make the equal opportunity clause a part of the contract my simply citing to § 60–741.5. In contrast, current § 60–741.22 states that the equal opportunity clause may be incorporated into the contract by reference. The intent of the proposal is to clarify the current requirement. The proposal does not reference the term "incorporation by reference," inasmuch as the regulations of the Office of Federal Register at 1 CFR part 51 preclude the use of the term in this context.

**Subpart B—Discrimination Prohibited**

*Section 60–741.20 Covered Employment Activities*

This section, which lists various types of employment practices to which part 60–741 applies, is patterned after § 1630.4 of the EEOC regulations, and is substantially identical to that section. See EEOC appendix, 56 FR at 35747. The current section 503 regulations contain a similar, but less detailed, listing in the affirmative action clause (§ 60–741.4(a)).

*Section 60–741.21 Prohibitions*

This section, which sets out in detail the various types of prohibited discriminatory practices, generally adopts and consolidates the EEOC regulations at § 1630.5 through § 1630.11. See EEOC appendix, 56 FR at 35746–50. A number of the prohibitions set out in this section are paralleled in the current section 503 regulations or are implicit from those regulations. However, the analogous existing provisions are organized under the rubric of "affirmative action policy, practices, and procedures" (§ 60–741.6). As noted above, today's proposal reorganizes the regulations so as to clearly define which obligations are components of the affirmative action program requirement, and thus applicable only to contractors that employ 150 or more persons and hold a contract value at $150,000 or more (see discussion of subpart C below).

The introductory sentence of this section, which states that "discrimination" includes the acts described in proposed §§ 60–741.21 and 60–741.23, is patterned after the final sentence of § 1630.4 of the EEOC regulations. Paragraph (a), which sets out a general prohibition regarding disparate treatment discrimination, is not derived from any express EEOC regulatory provision, and is included in order to remove any doubt that such discrimination is prohibited. Paragraphs (b) through (h), which specify the other types of prohibited discrimination, adopt and consolidate the EEOC regulations noted above. Except as noted in the following, proposed paragraphs (b) through (h) are substantially identical to their counterpart provisions in the EEOC regulations and are not paralleled in the current section 503 regulations.

Proposed paragraph (f)(1), which provides that it is unlawful to fail to make reasonable accommodation, unless the contractor can demonstrate an undue hardship, is substantially similar to current § 60–741.6(d). As stated in the EEOC appendix (at p. 35749), the contractor is not required to provide a reasonable accommodation unless the disabled individual informs the contractor that an accommodation is needed. However, if an employee with a known disability is having difficulty performing his or her job, the contractor may inquire whether the employee is in

need of a reasonable accommodation. (This contrasts with the duty of a contractor which is covered by the written affirmative action program requirement; such a contractor must inquire about the need for an accommodation in that circumstance. See proposed § 60–741.44(d).) Further, although proposed paragraph (f)(2), which states that it is unlawful to deny employment opportunities based on the need to make a reasonable accommodation, is not paralleled in the current regulations, that obligation is implicit in current § 60–741.6(d). The proposal does not incorporate a provision which is paralleled to § 1630.9(c) of the EEOC regulations, which states that an employer is not excused from regulatory requirements because of any failure to receive technical assistance authorized by the ADA; no similar technical assistance is provided for under section 503.

The first sentence of proposed paragraph (g)(1)—which prohibits the use of selection criteria that screen out disabled individuals, unless the selection criteria are shown to be job-related and consistent with business necessity —is substantially identical to § 1630.10 of the EEOC regulations. Further, this provision is substantially similar to current § 60–741.6(c). However, the last two sentences in paragraph (g)(1), which pertain to exclusionary decisions that are not based on essential job functions, are derived from the EEOC regulations' appendix (p. 35749), rather than the regulations themselves. Paragraph (g)(2) provides that the Uniform Guidelines on Employee Selection Procedures (which, among other things, set out certain requirements for validating employee selection procedures which adversely affect particular race, sex or ethnic groups) do not apply to part 60–741. This provision is derived from the EEOC regulations' appendix (p. 35749).

Paragraph (h) requires that the contractor administer employment tests to eligible applicants or employees with impaired sensory, manual, speaking, mobility or other skills in a format that does not require the use of the impaired skills, unless such skills are the factors that the test purports to measure. This provision is substantially identical to § 1630.11 of the EEOC regulations, except that the EEOC regulation does not reference "mobility or other" skills. The proposal makes this reference to clarify that disabled individuals may not be excluded from a job that they can actually perform merely because they are hampered in the ability to complete or succeed on a test as a result of their impaired skills (resulting from their disability)—no matter what the impaired skills may be. This obligation is consistent with that imposed by the EEOC's regulations (see the reasonable accommodation provisions at 29 CFR 1630.2(o) and 1630.9).

Paragraph (i), compensation, is derived from current § 60–741.6(e), and (with the exception of some editorial changes) is substantially similar to that section.

*Section 60–741.22 Direct Threat Defense*

This section clarifies that a contractor may exclude from employment opportunities persons who cannot perform essential job functions without posing a direct health or safety threat to themselves or others. This provision is derived from, and substantially similar to, § 1630.15(b)(2) of the EEOC regulations.

*Section 60–741.23 Medical Examinations and Inquiries*

This section incorporates EEOC's regulations regarding prohibited medical examinations and inquiries, and permitted medical examinations and inquiries (§§ 1630.13 and 1630.14, respectively). See EEOC appendix, 56 FR at 35750–51. For the sake of brevity, some of the EEOC provisions are consolidated by the proposal. For instance, proposed paragraph (a), which in part provides that it is generally unlawful for the contractor to make disability-related inquiries of an applicant or employee, integrates provisions contained in §§ 1630.13 (a) and (b) of the EEOC regulations. Also, the proposal incorporates a few editorial changes.

The provisions contained in this section generally have no counterpart in the current section 503 regulations. In some cases, the provisions in this section significantly contrast with the current regulations. In this regard, proposed paragraph (b)(2) permits the contractor to require an employment entrance medical examination or inquiry after making an offer of employment to a job applicant and to condition an offer of employment on the results of such an examination or inquiry if all similarly situated employees are subjected to such an examination or inquiry, and proposed paragraph (b)(3) permits a contractor to require a job-related medical examination or inquiry of an employee. Proposed paragraph (b)(5) specifies that examinations conducted pursuant to paragraph (b)(2) need not be job-related; however, if a person with a disability is screened out from an employment opportunity as a result of such examination or as the result of another examination, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity. In contrast, the current section 503 regulations do not limit the use of medical examinations to the post-employment-offer context or require that examinations or inquiries of employees be job-related. Rather, current § 60–741.6(c)(3) states that a contractor may conduct a pre-employment medical examination, provided that the results of such examination are used consistently with other requirements in § 60–741.6 (Affirmative action policy, practices, and procedures). However, similar to proposed paragraph (b)(5), current § 60–741.6(c)(2) provides that the contractor may not use physical or mental qualification requirements to screen out disabled persons, unless such requirements are shown to be job-related and consistent with business necessity.

Proposed paragraph (c), which states that the contractor may invite applicants and employees to voluntarily identify themselves as disabled, clarifies that this "self-identification" provision (see proposed § 60–741.42) constitutes an exception to the general prohibitions regarding medical inquiries under this section. The EEOC regulations do not contain a similar provision. However, the appendix to the EEOC regulations (p. 35750) states that collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act is not restricted by the EEOC's regulations' general prohibitions relating to such inquiries. Accordingly, the EEOC regulations permit contractors to extend the invitation to self-identify only with respect to individuals covered under section 503's regulations, i.e., employees who are employed in, or applicants for, positions that are engaged in carrying out a Government contract. See proposed § 60–741.4(a)(2).

Proposed paragraph (d)(1) provides that medical information obtained under this section must be collected and maintained on separate forms and in separate medical files, and that, with some enumerated exceptions, the information must be treated as a confidential medical record. Proposed paragraph (d)(2) states that such information may not be used for any purpose inconsistent with part 60–741. The current section 503 regulations at § 60–741.6(c)(3) contain substantially identical requirements regarding

confidentiality and the use of medical information. However, the current regulations do not contain any similar information collection or maintenance requirements.

OFCCP has determined not to incorporate the contents of current §§ 60–741.7 (b) and (c), inasmuch as these provisions would unnecessarily duplicate and/or conflict with the above medical examination and inquiry provisions and other portions of the proposal. These sections of the current regulations provide that a contractor may obtain confirmation of an applicant's or employee's disability by requiring that the individual submit relevant medical documentation or undergo a medical examination, provided that such determination meets the requirements of the self-identification procedure (see proposed § 60–741.42 below) and is for the purpose of affirmative action and proper job placement.

*Section 60–741.24 Drugs and Alcohol*

Proposed paragraph (a), which sets out permitted types of contractor practices relating to the regulation of workplace drug and alcohol use, and proposed paragraph (b), which governs the permissible use of drug testing, are substantially identical to the EEOC regulations at §§ 1630.16 (b) and (c), respectively. See EEOC appendix, 56 FR at 35738–39. (With the exception of paragraph (f) of § 1630.16, which is adopted by proposed § 60–741.25, today's proposal does not adopt the other provisions contained in that section, which enumerates specific activities permitted under the ADA.) As discussed below, proposed paragraphs (a) and (b) contain minor technical changes (as well as a number of editorial changes) from the EEOC rule. This section is not paralleled by any provisions contained in the current section 503 regulations.

Section 1630.16(b) (5) and (6) of the EEOC regulations state that employees may be required to comply with the regulations of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission regarding alcohol and drugs. In contrast, proposed paragraphs (a) (5) and (6) state that employees may be required to also comply with similar regulations of other Federal agencies.

Paragraph (b)(3) states that any medical information obtained from a drug test, except information regarding the illegal use of drugs, is subject to the requirements of §§ 60–741.23(b) (5) and (d). In turn, proposed § 60–741.23(b)(5) states that the contractor must demonstrate that criteria which are used to screen out disabled applicants or employees are job-related and consistent with business necessity; and proposed § 60–741.23(d) provides for certain confidentiality requirements with regard to medical information. The parallel EEOC regulation (§ 1630.16(c)(3)) fails to reference medical confidentiality requirements, but the EEOC appendix, 56 FR at 35753, notes that the information in issue should be treated as a confidential medical record.

*Section 60–741.25 Health Insurance, Life Insurance and Other Benefit Plans*

Proposed paragraphs (a), (b), (c) and (e) of this section provide that the contractor may administer benefit plans in a manner which is not inconsistent with State law, or administer a benefit plan that is not subject to State laws that regulate insurance, provided that such activities are not used as a subterfuge to evade the purposes of part 60–741. These sections are patterned after EEOC's regulations at §§ 1630.16(f)(1)–(f)(4), respectively. See EEOC appendix, 56 FR at 35753. Proposed paragraph (d), which provides that the contractor may not deny an individual with a disability equal access to insurance based on disability alone if the disability does not pose increased risks, is derived from the EEOC appendix (p. 35753).

**Subpart C—Affirmative Action Program**

Subpart C is derived from §§ 60–741.5 (Applicability of the affirmative action program requirement) and 60–741.6 (Affirmative action policy, practice, and procedures) of the current section 503 regulations. This subpart revises and reorganizes those sections to incorporate only obligations which are applicable to contractors with a written affirmative action program requirement, i.e., those that employ 150 or more employees and hold a contract of $150,000 or more. See proposed § 60–741.40(a). Provisions currently in § 60–741.6 that are applicable to all covered contractors have been incorporated into proposed subparts B (Discrimination Prohibited) or E (Ancillary Matters).

*Section 60–741.40 Applicability of the Affirmative Action Program Requirement*

Paragraph (a), which is not paralleled in the current regulations, clarifies the application of the requirements of subpart C, and raises the threshold for the application of these requirements. Current § 60–741.5(a) requires contractors that have 50 or more employees and a Government contract of $50,000 or more to prepare and maintain a written affirmative action program (AAP). Proposed paragraph (a) changes this AAP threshold to 150 or more employees and a contract of $150,000 or more.

The increase in the AAP coverage threshold is designed to reduce the economic burdens imposed on employers by the regulations. Much of the increase in the dollar amount threshold is warranted by inflation alone—the $50,000 threshold has remained unchanged since 1976. Moreover, this revision is consistent with the requirements set out in the President's January 28, 1992, Memorandum to Department and Agency Heads on Reducing the Burden of Government Regulation. Among other requirements, the memorandum directs Federal agencies to propose necessary administrative changes for their existing regulations and programs to ensure that they comply with specified standards relating to the promotion of economic growth. For instances, agencies are required to ensure that the expected benefits to society of any regulation clearly outweigh the expected costs it imposes on society.

OFCCP estimates that, as a result of the revision, roughly 8,700 fewer regulated employers will be covered by the AAP obligations. However, this change is likely to result in only a marginal reduction in burden hours for regulated employers at this time. As discussed above, regulated employers would remain subject to substantially parallel AAP requirements by virtue of VEVRAA (see discussion regarding § 60–741.4(a)(2)). However, as noted above, OFCCP is planning to propose a revision to the VEVRAA regulations to conform the AAP threshold levels contained therein to those proposed for the section 503 regulations. OFCCP estimates that when both the section 503 and VEVRAA AAP thresholds are set at 150 employees and a $150,000 contract, this will result in a significant reduction in paperwork burdens to regulated employers. Moreover, OFCCP estimates that the revision would result in the exclusion of only a modest proportion of employees—about six percent—who currently benefit from the AAP obligations. The revision would not affect larger contractors who employ the great majority of employees. It should be emphasized that the increase in the AAP threshold will not affect any workers' enjoyment of the regulations' antidiscrimination protections—all covered positions will continue to benefit from these protections. Thus, the revision would help minimize the economic burden imposed by the

regulations while resulting in minimal reduction in benefits. Paragraph (b) and (c)—which specify the contractor's duties with regard to the preparation and maintenance of its affirmative action program (AAP), and the updating of its AAP, are derived from current §§ 60–741.5(a) and (b), respectively. Minor clarifying changes or organizational changes have been made with respect to these provisions. For instance, current § 60–741.5(a) states the AAP shall set forth the contractor's policies, practices and procedures "in accordance with § 60–741.6 of this part." The reference to this particular section has been omitted to clarify that the contractor's AAP should address all relevant practices under part 60–741, not only those that relate to this particular section. Current § 60–741.5(a) also states that contractors presently holding contracts shall update their AAPs within 120 days of the effective date of part 60–741. This provision has been incorporated into a separate effective date section (§ 60–741.85). Current § 60–741.5(c), which sets out the "self-identification" procedures, has been incorporated with revisions at proposed § 60–741.42.

Paragraph (d) states that the contractor shall generally submit its AAP within 30 days of a request by OFCCP and that it shall also make the document promptly available on-site upon such request. These provisions, which are not contained in the current regulations, have been included in order to help ensure that OFCCP has access to the contractor's AAP as soon as needed.

*Section 60–741.41 Availability of Affirmative Action Program*

With the exception of some stylistic differences, this section, which provides that the AAP shall be available to any applicant or employee at a location and time which shall be posted at each establishment, is identical to current § 60–741.5(d).

*Section 60–741.42 Invitation to Self-Identify*

In significant part, this section provides that the contractor may, for affirmative action purposes, invite all applicants and employees to inform the contractor as to whether they believe they may be covered by the act; the contractor should seek the advice of the individual as to proper job placement and appropriate accommodation. If choosing to extend the invitation to self-identify, the contractor is required to inform the individual that the information is being requested on a voluntary basis and will be treated confidentially, and to maintain a separate file on persons who have self-identified and provide that file to OFCCP upon request. The contractor may develop its own invitation for this purpose, although an acceptable form of such invitation is set forth in appendix C.

As noted above, this section is derived from current § 60–741.5(c), but is distinct from the current regulation, which makes the self-identification procedure mandatory. Moreover, proposed paragraph (a) revises the provisions in current § 60–741.5(c) to accomplish the following: To clarify that the invitation should be provided to all applicants and employees, and not just to those "who believe themselves covered by the Act" (as specified in the current regulation); to require that the invitation provide relevant information regarding the contractor's AAP; and to require that the contractor maintain, and provide to OFCCP upon request, a file regarding persons who have self-identified. Proposed paragraph (c), like paragraph (c)(3) of the current regulation, states that the contractor is not relieved by this section of its duty to take affirmative action with respect to applicants and employees with known disabilities. The proposed paragraph, however, omits as unnecessary the statement contained in the current regulation that the contractor is not obligated to search the medical files of applicants or employees to determine the existence of a disability.

OFCCP believes that the self-identification provision should be permissive, rather than mandatory, in light of proposed §§ 60–741.44 (b) and (d), which, respectively, impose comparable mandatory requirements regarding the consideration of disabled applicants and employees for employment opportunities, and inquiries concerning needed accommodations for employees. In relevant part, § 60–741.44(b) (which is similar to current § 60–741.6(b)), provides that the contractor must ensure that its personnel processes provide for systematic consideration of the job qualifications of applicants and employees with known disabilities for all job vacancies. Section 60–741.44(d) (which is not paralleled in the current regulations) provides in part that where an employee with a known disability is having difficulty performing his or her job, the contractor shall confidentially inquire whether he or she is in need of a reasonable accommodation. OFCCP believes that these provisions will provide ample assurances that disabled applicants and employees are afforded proper consideration for employment opportunities and reasonable accommodations.

*Section 60–741.43 Affirmative Action Policy*

This section, which sets out the contractor's fundamental affirmative action obligations, clarifies that such obligations include a duty to refrain from discrimination; that the contractor is required to take affirmative action efforts with respect to all levels of employment, including the executive level; and that such requirements apply to all employment activities. This provision is substantially similar to current § 60–741.6(a) (which does not contain the reference to the prohibition against discrimination). The remaining paragraphs of current § 60–741.6 are comprised of the specific required affirmative action policy, practices and procedures. As discussed below, these provisions have been incorporated with modification into proposed § 60–741.44.

*Section 60–741.44 Required Contents of Affirmative Action Programs*

The provisions contained in this section were derived from existing § 60–741.6, and have been organized, as stated in this section's introductory sentence, to set out the minimum required AAP ingredients. Although a number of the requirements are also applicable to contractors that do not have a written AAP obligation, i.e., those that do not employ 150 or more employees and hold a contract of $150,000 or more, all requirements applicable to AAP contractors are included in this section for the sake of clarity. In addition, this section sets out suggested affirmative action activities that the contractor is encouraged to undertake in order to comply with the specified minimum affirmative action requirements. The contractor has discretion in undertaking these suggested activities or other activities in satisfying the mandatory requirements. In some cases, obligations that are not mandatory under the current regulations have been made mandatory in this proposal and vice versa.

Paragraph (a), which states that the contractor's AAP shall include its equal opportunity policy statement, is not paralleled in the current regulations; this practice is already generally followed by contractors.

With the exception of its second sentence, paragraph (b), which specifies that the contractor must ensure that its personnel processes provide for careful consideration of the job qualifications of known disabled individuals, is substantially similar to existing § 60–

741.6(b). The second sentence of the paragraph, which states that the contractor shall ensure that its personnel processes are free from stereotyping, is derived from current § 60–741.6(i)(2); however, in contrast to the proposed provision, the current provision is not mandatory. OFCCP believes that this requirement is central to the act's affirmative action obligation, and therefore should be mandatory.

Paragraphs (c)(1) and (2) are substantially similar to current §§ 60–741.6(c)(1) and (2), respectively. Like current § 60–741.6(c)(1), proposed paragraph (c)(1) requires that the contractor periodically review all physical and mental job qualification standards to ensure that qualification standards that tend to screen out qualified individuals with disabilities are job-related for the position in question and consistent with business necessity. In contrast to the proposal, the current regulation also states that such standards must be consistent with safe performance of the job. OFCCP has determined it unnecessary to incorporate the reference to "safe performance" in the proposal because that concept is subsumed by the concept of business necessity. Proposed paragraph (c)(1), also in contrast with the current regulation, clarifies that the contractor must ensure that such exclusionary job standards concern essential functions of the job in issue. This clarification is consistent with the EEOC's interpretation of analogous requirements under the ADA. See EEOC appendix, 56 FR 35749 (discussion of § 1630.10 Qualification standards, tests and other selection criteria). Proposed paragraph (c)(2) requires that the contractor demonstrate that its use of physical or mental selection standards which tend to screen out qualified individuals with disabilities is job-related and consistent with business necessity. This paragraph contains the same type of modifications that have been incorporated into proposed paragraph (c)(1).

Paragraph (c)(3) incorporates, for the sake of clarity, a statement similar to that contained in proposed § 60–741.22 that the contractor may exclude from employment opportunities persons who pose a direct threat to health or safety.

Paragraph (d) requires the contractor to make reasonable accommodation for a known otherwise qualified disabled individual, unless it can demonstrate an undue hardship on the operation of its business. The proposal is very much similar to current § 60–741.6(d) (first sentence), except that it clarifies that the accommodation duty is owed only to an "otherwise qualified" disabled individual. As stated in proposed Appendix B, a disabled individual is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions. The second sentence of the current regulation, which sets out factors that are relevant to the determination of the extent of the contractor's accommodation obligation, is not incorporated in proposed paragraph (d). A similar more detailed listing of factors is included in the proposed definition of "undue hardship" (§ 60–741.2(w)(2)).

Proposed paragraph (d) also requires that where an employee with a known disability is having difficulty performing his or her job, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation. The current regulations do not contain a parallel provision. OFCCP believes that this requirement is an essential component of the contractor's affirmative action duty. Absent such a requirement, the contractor would be free to take adverse action against a known disabled employee (who might be otherwise qualified) merely because the individual failed to request an accommodation. A disabled individual who is in need of an accommodation may fail to seek out an accommodation for any number of reasons; for instance, he or she may not perceive the need for an accommodation or may be unaware of his or her right to obtain an accommodation. Because the provision applies only to an employee the contractor knows to be disabled (that is, in the situation where it is reasonable to conclude that a performance problem may be related to a disability) and does not require the contractor to speculate about the need for accommodation in equivocal situations, OFCCP believes that it fairly balances the rights of both the employee and employer.

Paragraph (e) provides that the contractor must develop procedures to ensure that its disabled employees are not harassed because of disability. The current regulations, at § 60–741.6(h)(1)(i), contain a similar provision which is not mandatory (supervisors "should" be advised that the contractor is obligated to prevent harassment). Upon reconsideration, OFCCP believes that harassment is a sufficiently important issue to warrant mandatory affirmative steps to ensure that it does not occur.

Paragraph (f) provides that the contractor has a duty to take such outreach and recruitment activities to effectively recruit disabled workers as are appropriate in light of the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate. The paragraph also sets out a listing of appropriate activities that contractors should take in this regard, and specifies that the contractor has discretion in undertaking these or other activities. This section is generally consistent with current § 60–741.6(f), but incorporates a number of clarifying modifications. Some of the suggested outreach and recruitment activities listed in the current regulations concern policies regarding the internal dissemination of the contractor's policy, and therefore have been incorporated into proposed § 60–741.44(g), which addresses that subject. Moreover, because paragraph (f)(1) states that the contractor should obtain the assistance of State employment security agencies with respect to its recruitment efforts, current § 60–741.8, which contains a substantially similar provision, is not carried forward by today's proposal.

Also, the proposal consolidates into paragraph (f) (without substantive change) some portions of current § 60–741.6(f) (positive recruitment and external dissemination of policy), and § 60–741.6(i) (development and execution of AAPs): proposed paragraph (f)(1), which states that the contractor should obtain assistance from specified types of recruitment sources, and should conduct formal briefing sessions with recruitment source representatives, is derived from current §§ 60–741.6(f)(4) and 60–741.6(i)(4); proposed paragraph (f)(2), which relates to recruitment efforts at educational institutions, consolidates current §§ 60–741.6 (f)(5), (i)(7) and (i)(8); and proposed paragraph (f)(4), which specifies that disabled individuals should participate in outreach and recruitment activities, consolidates current §§ 60–741.6 (f)(8) and (i)(6).

Proposed paragraph (f)(7) establishes a new suggested recruitment activity that has no counterpart in the current regulations. That paragraph states that the contractor, in making hiring decisions, should consider known applicants with disabilities for other positions for which they may be qualified when the position applied for is unavailable. OFCCP believes that such a practice will be effective in helping to maximize the employment opportunities of disabled persons. In many cases, the consideration of applicants for such alternative jobs will not place any added burdens on the contractor's personnel system (because,

for instance, that practice is already standard for applicants in general). Indeed, this practice may frequently benefit a business inasmuch as it can obviate the need to seek additional qualified candidates.

Proposed paragraph (g)(1), which sets out requirements which are complementary to proposed paragraph (f), states that the contractor is required to develop internal procedures to assure supervisory, management and other employee cooperation and participation in the contractor's efforts to implement its affirmative action obligation. Similar to paragraph (f), paragraph (g)(2) lists suggested procedures that the contractor should undertake to communicate its affirmative action obligation internally. For the most part, the provisions in these paragraphs are derived from existing § 60–741.6(g). However, in contrast to the proposal, that section provides that the contractor's duty to engage in internal dissemination activities is not mandatory. Upon reconsideration, OFCCP concludes, as stated in proposed paragraph (g)(1) itself, that the contractor's outreach program will not be effective without internal support, which, in turn, requires that the contractor engage in reasonable efforts to disseminate its affirmative action policy to all employees. Accordingly, OFCCP believes that the internal communication duty should be mandatory. Further, paragraph (g)(1) incorporates a clarification (like that contained in proposed paragraph (f)) that the scope of the contractor's efforts shall depend on all the relevant circumstances.

Moreover, as noted above, relevant provisions from current § 60–741.6(f) are consolidated (without substantive change) into this paragraph as well: proposed paragraph (g)(1) combines provisions from current §§ 60–741.6 (f)(1) and (g) (introductory sentence). Proposed paragraph (g)(2)(ii), which states that the contractor should periodically inform all employees and prospective employees of its affirmative action policy and schedule employee meetings to discuss the policy, is derived from current §§ 60–741.6(f)(3) and (g)(4). (Current § 60–741.6(g)(9) states that the contractor, as a suggested internal dissemination procedure, should post its affirmative action policy, including a statement that employees and applicants are protected from disability-related harassment, on company bulletin boards. Today's proposal incorporates this provision as a mandatory requirement at § 60–741.80. See the discussion regarding that section below.)

Paragraph (h), which requires the contractor to implement an audit system to measure the effectiveness of its AAP and to undertake necessary action to bring its program into compliance, is derived (without substantive modification) from current § 60–741.6(h)(3) (where the provision is set out as one of several specified responsibilities of the contractor's affirmative action manager). In contrast to the current regulation, today's proposal sets out the provision as a separate subsection in order to emphasize its importance. Further, the proposal clarifies that the requirement is mandatory.

Paragraph (i) provides that the contractor shall designate an official of the company as an affirmative action manager and provide that individual with necessary top management support and staff. This provision is derived from current § 60–741.6(h). In view of the importance of designating an official as responsible for the implementation of the contractor's AAP, the proposal, in contrast to the current regulation, provides that the contractor's duty in this regard is mandatory. Additionally, today's proposal does not incorporate the current regulation's listing of activities in which the affirmative action manager should engage, inasmuch as such a listing would unnecessarily duplicate other provisions contained in the proposal.

Paragraph (j), which is based on current § 60–741,6(i)(3), requires the contractor to train all employees involved in the personnel process to ensure that the contractor's AAP commitments are implemented. Because of the importance of this requirement, the proposal, in contrast to the current regulations, specifies that it is mandatory and sets it out as a separate subsection.

*Section 60–741.45 Sheltered Workshops*

This section specifies the circumstances under which the contractor may rely on the services of sheltered workshops in implementing its AAP obligations. With the exception of some editorial difference, it is identical to current § 60–741.6(j).

**Subpart D—General Enforcement and Complaint Procedures**

As stated above, this subpart expands the current provisions contained in subpart B of the current regulations and conforms many of those provisions to the parallel provisions contained in the regulations implementing Executive Order 11246 (41 CFR part 60–1, subpart B). Upon careful consideration, OFCCP has concluded that in the specific instances where the regulations are conformed there is no reason to apply different procedures under the Act and the Executive Order. The proposal also conforms complaint procedures under the regulations to those applicable under the ADA (29 CFR part 1601, subpart B). (The applicable procedures are those that were issued pursuant to title VII of the Civil Rights Act of 1964. See section 107(a) of the ADA, 42 U.S.C. 12117.) OFCCP believes that it is desirable to utilize consistent procedures in this regard given that the agency, pursuant to section 107(b) of the ADA and OFCCP's and EEOC's joint implementing regulations under that section, shares responsibility for the processing of complaints which are cognizable under both the ADA and section 503. Further, this subpart incorporates one stylistic change throughout. The current regulations in some instances make reference to violations of (or compliance with) the "affirmative action clause" (i.e., equal opportunity clause) and/or to violations of (or compliance with) "the Act or this part." For the sake of consistency, the proposal generally makes reference to violations of (or compliance with) "the act or this part."

OFCCP recognizes that differences and disputes about the requirements of the act and the regulations may arise between contractors and individuals with disabilities as a result of misunderstandings. Such disputes frequently can be resolved more effectively through informal negotiation or mediation procedures, rather than through the formal enforcement process set out in the regulations. Accordingly, OFCCP will encourage efforts to settle such differences through alternative dispute resolution, provided that such efforts do not deprive any individual of legal rights under the act or the regulations. (See the Department of Labor's policy on the use of alternative dispute resolution. 40 FR 7292, Feb. 28, 1992.)

*Section 60–741.60 Compliance Reviews*

Paragraph (a) of this section establishes express regulatory authority for OFCCP to conduct compliance reviews with regard to contractors' implementation of their affirmative action obligations, and provides that the review shall consist of a comprehensive analysis of all relevant practices, and that recommendations for appropriate sanctions shall be made. Paragraph (b) specifies that where deficiencies are found, reasonable conciliation efforts shall be made pursuant to § 60–741.62.

Paragraphs (a) and (b) are not paralleled in the current section 503 regulations, but are generally patterned after selected portions of the compliance review provisions contained in the regulations implementing Executive Order 11246 (41 CFR 60–1.20 (a) and (b), respectively). However, the statement authorizing OFCCP to conduct compliance reviews in proposed paragraph (a), which is included for the sake of clarity, is a new provision and is not contained in the Executive Order regulations. The proposal is consistent with current OFCCP practice under section 503.

The proposal is generally consistent with the relevant provisions of the 1980 final rule at § 60–1.20. The final rule, however, does not contain an express statement regarding OFCCS's authority. Further, in contrast to the proposal, the 1980 final rule, in §§ 60–1.20 (a) and (b), discusses various technical internal agency procedures regarding the conduct of compliance reviews (e.g., noting in paragraph (a) that compliance reviews normally are conducted in three stages). Upon further consideration, OFCCP has determined that it is unnecessary to incorporate these procedural statements into today's proposal.

Moreover, today's proposal does not adopt the 1980 final rule's preaward compliance reviews provision (§ 60–1.21), which is essentially a modified version of the preaward procedures contained in the Executive Order regulations (§ 60–1.21(d)). The current section 503 regulations do not contain a similar provision. In substance, the 1980 final rule would have required that all prospective nonconstruction contractors and subcontractors seeking contracts exceeding $1 million be subject to a compliance review under the act before the award of the contract. The 1980 final rule also would have specified criteria that OFCCP should apply in prioritizing the conduct of preaward reviews, and would have established requirements regarding the clearance of the contract. OFCCP has determined not to adopt a preaward compliance review procedure in today's proposal because it believes, upon reconsideration, that the diversion of necessary resources to support such a compliance initiative would unduly impair its ability to effectively conduct other compliance activities.

*Section 60–741.61 Complaint Procedures*

Paragraph (a), a provision not paralleled in the current regulations, cross-references OFCCP's and EEOC's procedural regulations which govern the processing of complaints cognizable under both section 503 and the ADA, and specifies that complaints filed under part 60–741 will be processed in accordance with those regulations. All other procedural provisions contained in paragraphs (b) through (f) of this proposed section shall be applicable with regard to the processing of such complaints as well. Section 503 does not provide for a private right of action. See, *e.g., Hodges* v. *Atchison, Topeka and Santa Fe Ry. Co.*, 728 F. 2d 414 (10th Cir.), *cert. denied*, 469 U.S. 822 (1984). However, as specified in OFCCP's and EEOC's procedural regulations, an aggrieved individual whose complaint is cognizable under section 503 and the ADA will be authorized to file suit in Federal court in certain circumstances, provided that his or her complaint is processed pursuant to those regulations.

The proposal drops the provision in current § 60–741.25 that the Director of OFCCP shall be primarily responsible for the investigation of complaints and other matters as necessary to ensure the effective enforcement of the act. The intent of this provision, which was included in the regulations prior to the delegation of all compliance authority under section 503 to OFCCP, was to ensure that OFCCP had primary control with regard to the administration of the act. The provision is no longer necessary. The 1980 final rule would have established similar provisions in § 60–1.27 to state that the Director may assume jurisdiction over any matter when necessary to the enforcement of section 503, and that the Director may reconsider any pending matter under the act. OFCCP concludes that these provisions are unnecessary, and thus declines to incorporate them in today's proposal. Further, the provision from the 1980 final rule (§ 60–1.48) that states that a contractor which has complied with the recommendations or orders of OFCCP which it believe to be erroneous may request a hearing and review of the alleged erroneous action, is unnecessary and is not carried forward. That provision relates to preaward compliance reviews (specifically, it is a means by which a contractor can avoid a contract "pass over" while still contesting OFCCP's review findings) and is not needed because, as stated above, OFCCP will not be conducting preaward reviews under the act.

Paragraph (b), which is derived from current § 60–741.26(a), specifies that a person may, personally or by an authorized representative, file a written complaint with the Director of OFCCP alleging an individual or class-wide violation of the act or the regulations within 300 days of the alleged violation; the paragraph also indicates where the complaint should be filed. In contrast to the proposal, current § 60–741.26(a) requires that the complaint be filed within 180 days of the alleged violation. The proposal incorporates a 300-day filing deadline, which is consistent with the ADA filing deadline in deferral jurisdictions. That is, EEOC's regulations provide that a complaint may be filed up to 300 days from the date of the alleged violation where applicable State or local law prohibits the employment practice alleged to be unlawful and a State or local agency has been authorized to grant or seek relief. 29 CFR 1601.13.

However, potential complainants should be aware that where there is no applicable State or local law that is comparable to the ADA, an ADA charge must be filed within 180 days of the alleged violation. *Id.* Accordingly, depending on applicable State or local law, a complaint filed between 180 and 300 days of the alleged violation may not be timely under the ADA, although it will be timely under section 503. (Pursuant to OFCCP's and EEOC's procedural regulations, a complaint filed with OFCCP under section 503 is considered to be dual filed under the ADA where the complaint also falls within the jurisdiction of the ADA.) In such a case, the aggrieved individual's rights under the ADA, including the private right to file a lawsuit, would be lost.

Also in contrast to the proposal, current § 60–741.26(a) does not indicate where the complaint should be filed. The location for filing is included to assist the complainant.

Further, the proposal does not incorporate the internal review procedure contained in current § 60–741.26(b) or in the 1980 final rule (§ 60–741.23(f)). The current regulation provides that, when an employee of a contractor files a complaint, and the contractor has an internal review procedure, the contractor will be permitted 60 days to process the complaint under that procedure. If there is no resolution of the matter which is satisfactory to the complainant within 60 days, the complaint then is processed by OFCCP. The 1980 final rule would have provided that the complaint may be referred to the contractor for internal review with the employee's consent. OFCCP has found that the current procedure has not been particularly effective in providing expeditious and satisfactory complaint resolutions. Moreover, in light of OFCCP's role in processing joint section 503/ADA complaints, OFCCP wishes to conform

its procedures as closely as possible to those used by EEOC (which does not refer complaints for internal review) the procedure would interfere with OFCCP's processing of joint section 503/ADA complaints. Therefore, OFCCP has decided not to carry forward either a mandatory or voluntary complaint referral procedure. Although there is no regulatory requirement regarding informal resolution of complaints, OFCCP nevertheless strongly encourages parties to attempt to do so whenever possible.

Paragraph (c)(1) specifies the required contents of complaints, and generally is consistent with current § 60–741.26(c). In contrast to the current regulation, the proposal specifies that the complainant must state the pertinent dates concerning the alleged violation (the information need only be provided to the best of the complainant's recollection), and requires that the individual submit facts showing that he or she is a covered individual with a disability (rather than submitting a separate signed statement to that effect, as is required under the current regulation).

OFCCP has determined not to incorporate the contents of current § 60–741.7(a)—which requires that a disabled individual filing a complaint submit a signed statement specifying the disabling conditon—because that provision is no longer appropriate in light of the modifications reflected in proposed paragraph (c)(1). Similarly, OFCCP has decided no longer to require, as specified in current § 60–741.7(d), that medical documentation submitted in support of a complaint be based upon the specified American Medical Association Guidelines. Upon reconsideration, OFCCP believes that this requirement unnecessarily restricts the manner in which a complainant can support his or her claim of a violation of section 503.

Paragraph (c)(2) establishes new section 503 procedures regarding third party complaints. The procedures are derived from the analogous regulation applicable under the ADA (29 CFR 1601.7(a)). This paragraph specifies that a third party complaint need not identify by name the person on whose behalf it is filed, although the person filing the complaint shall provide identifying information to OFCCP and other information required under paragraph (c)(1); and that OFCCP shall verify the authorization of the complaint by the person on whose behalf it is made, who may request that his or her identity remain confidential. The purpose of these provisions is to help prevent retaliation against persons seeking to exercise rights protected under the act by preserving the confidentiality of the complaint process while also ensuring both the OFCCP has sufficient information properly to investigate the complaint and that the complaint is properly authorized. The 1980 final rule would have provided (at § 60–741.23(c)) that signed third party complaints will be accepted whether or not the third party signing the complaint is the authorized representative. Upon reconsideration, OFCCP believes that authorization to file a complaint is an appropriate requirement.

Paragraph (d), which sets out the procedure regarding a complaint which contains insufficient information, is substantially identical to current § 60–741.26(d).

Paragraph (e), which is based on the first sentence of current § 60–741.26(e), provides that the Department of Labor shall promptly investigate complaints. OFCCP has determined not to incorporate the statement contained in the second sentence of the current regulation regarding the contents of a complete case record, inasmuch as this is primarily an internal procedural matter, and thus need not be a part of the regulations.

Paragraph (f)(1), which states that the complainant shall be notified where the complaint investigation finds no violation or the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor, is consistent with the first sentence of current § 60–741.26(g). However, the proposal does not incorporate the final sentence of that provision, which states that the complainant may request that the Director review the finding or decision. Instead, the paragraph incorporates a provision which specifies that the Director, on his or her own initiative, may reconsider the finding or decision. OFCCP has found that the existing review procedure has not been productive. OFCCP has determined to drop the existing procedure for this reason and because, pursuant to OFCCP's and EEOC's joint complaint processing regulation, the complainant in this circumstance is provided an opportunity to secure his or her rights in Federal court under the ADA if his or her complaint is cognizable under the ADA (the large majority of cases). Paragraph (f)(2) provides that the Director will review all determinations of no violation that involve complaints that are not also cognizable under the ADA. This will help ensure the accuracy of determinations regarding claims raised by persons who would not have an opportunity to seek relief in Federal court. OFCCP believes that the proposed review procedure will provide an adequate check on its no violation findings or decisions not to initiate proceedings.

Paragraph (f)(3) sets out notification procedures regarding the Director's reconsideration of investigative findings.

Paragraph (f)(4), which states that the contractor shall be invited to participate in conciliation pursuant to § 60–741.62 where there is a finding of violation, is substantially similar to the first sentence of current § 60–741.26(g)(2). As discussed immediately below, the proposal incorporates (with modification) other portions of that section into a separate section on conciliation agreements.

*Section 60–741.62 Conciliation Agreements and Letters of Commitment*

The purpose of this section is to conform the section 503 regulatory procedures regarding conciliation agreements and letters of commitment to the substance of the parallel procedures contained in the Executive Order regulations (41 CFR 60–1.33). Proposed paragraph (a), which incorporates without substantive change paragraph (a) of the Executive Order regulation, requires OFCCP, where it finds a material violation of the act, to enter into a written agreement with the contractor which provides for appropriate remedial action, provided that the contractor is willing to do so and OFCCP determines that settlement on that basis (rather than referral for potential enforcement) is appropriate. The proposal is conceptually similar to the corresponding current section 503 regulation (§ 60–741.26(g)(2)), but incorporates a number of clarifying changes which reflect current OFCCP practice under section 503. For instance, although the current regulation, like the proposal, provides for the use of written settlement agreements under which the contractor shall commit to take corrective action, it does not use the term "conciliation agreement," expressly state that "make whole remedies" shall be addressed by the agreement, or expressly require that OFCCP determine that settlement through such an agreement (rather than referral for potential enforcement) is appropriate. The last sentence of the proposal, which is derived from the current section 503 regulation, provides that the agreement shall specify the date for the completion of the needed remedial action, which shall be the earliest date possible.

However, the proposal does not incorporate the provision from the current regulation which states that the contractor may be considered in compliance on condition that the commitments contained in the agreement are kept. Further, the proposal does not incorporate a related provision from the 1980 final rule. The 1980 rule, at § 60–1.20(c), states the taking of corrective actions by the contractor pursuant to a conciliation agreement does not preclude OFCCP from making future determinations of noncompliance where OFCCP either finds that the contractor's actions are not sufficient to achieve compliance, or it uncovers violations not previously revealed in an investigation. Upon reconsideration, OFCCP concludes that these provisions are unnecessary and should not be incorporated into the regulations, because the concerns they reflect are addressed by general legal principles.

Paragraph (b), which clarifies the distinction between conciliation agreements and letters of commitment, is incorporated without substantive change from paragraph (b) of the Executive Order regulation (41 CFR 60–1.33(b)).

The 1980 final rule (at § 60–1.26(a)) is substantially similar to proposed paragraph (a), but would have made a number of technical revisions that are not reflected in the proposal (e.g., paragraph (c) of the final rule clarified when a conciliation agreement becomes effective). OFCCP has determined not to incorporate these technical revisions, inasmuch as relevant guidance is already provided in OFCCP's Federal Contract Compliance Manual.

*Section 60–741.63 Violation of Conciliation Agreements and Letters of Commitment*

This section, which specifies the required notification and enforcement procedures relating to the contractor's violation of a conciliation agreement or letter of commitment, is derived from the Executive Order regulations (41 CFR 60–1.34), and contains a number of clarifying modifications. Most notably, paragraph (c) of the proposal contains a clarification that in enforcement proceedings related to violation of a conciliation agreement, OFCCP is not required to present proof of the underlying violations resolved by the agreement. The intent of this provision is to remove any doubt that OFCCP need not litigate claims that have already been resolved through the agreement. Although the current section 503 regulations do not contain provisions parallel to the proposal, the proposal reflects OFCCP's current practice under the act.

*Section 60–741.64 Show Cause Notices*

This section is substantially identical to § 60–1.28 of the Executive Order regulations. It provides that when the Director finds a violation he or she may issue to the contractor a notice requiring it to show cause, within 30 days, why enforcement proceedings should not be instituted; the provision also states that such a notice is not a prerequisite to enforcement proceedings. The current section 503 regulations do not contain a comparable provision. The 1980 final rule (at § 60–1.25) would have incorporated considerably more detailed procedures regarding show cause notices than are contained in the proposal; for instance, that rule would have incorporated specific rules on the issuance of the notice and its contents. OFCCP believes that it is more appropriate to incorporate such procedures into its Compliance Manual, and has done so.

*Section 60–741.65 Enforcement Proceedings*

This section generally conforms the provisions governing section 503 enforcement proceedings to those under the Executive Order regulations (§ 60–1.26(a)(2)), and reflects OFCCP's long-standing practice under the act. Similar to the Executive Order regulation, proposed paragraph (a)(1) provides, in part, that where a violation has not been corrected in accordance with applicable conciliation procedures, an administrative enforcement proceeding may be instituted to enjoin the violations, to seek appropriate make whole relief and to impose appropriate sanctions. The current section 503 regulations are consistent with this part of proposed paragraph (a)(1), but do not expressly state what relief will be sought in the proceedings. See §§ 60–741.26(g)(3) and 60–741.28(a) (the contractor shall be provided a formal hearing where a violation has not been resolved by informal means) and 60–741.29(a) (an opportunity for a formal hearing shall be provided where a violation is not resolved informally and a hearing is requested or the Director proposes to impose a sanction). The above-referenced provisions from the current regulations are subsumed within proposed paragraph (a)(1), and therefore are not separately adopted by the proposal. The proposal at paragraph (a)(1) also contrasts with the current section 503 regulations as well as with the Executive Order regulation in the following respects: It provides that enforcement proceedings also may be instituted where OFCCP determines that referral for formal enforcement (rather than settlement) is appropriate; and it specifies that the enforcement referral will be made to the Solicitor of Labor. Further, paragraph (a)(1) of the proposal clarifies that OFCCP may seek relief for aggrieved individuals identified either during a compliance review or a complaint investigation whether or not such individuals have filed a complaint with OFCCP. This clarification responds to an argument that has sometimes been raised by contractors that relief under the act is available only to persons who have filed a complaint with OFCCP. OFCCP concludes that such a limitation on available relief is clearly inconsistent with the act.

Finally, paragraph (a)(1), again contrasting with both the current section 503 regulations and the Executive Order regulations, states that interest on back pay shall be compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes. This provision would reverse the ruling of the Department of Labor's Assistant Secretary for Employment Standards in *OFCCP* v. *Washington Metropolitan Area Transit Authority*, 84–OFC–8 (orders dated August 23 and November 17, 1989) that simple interest, rather than compounded interest, should be used in the calculation of back pay awards under section 503. That ruling relied upon the Department's regulations (at 29 CFR part 20) implementing section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717). OFCCP had had a longstanding policy of requiring that interest on back pay awards under section 503 be compounded; such policy is consistent with the case law under title VII of the Civil Rights Act of 1964. OFCCP believes that it must reinstate this policy in order to ensure that aggrieved individuals obtain "make whole" relief.

Proposed paragraph (a)(2) provides that the Director, in addition to the use of administrative enforcement proceedings, may seek appropriate judicial action, including injunctive relief, to enforce the contractual provisions set forth in the regulations' equal opportunity clause. This provision is substantially identical to current § 60–741.28(b).

The proposal differs substantively from the 1980 final rule's enforcement procedures, which appear at § 60–1.29, in that it does not incorporate the procedures contained in paragraphs (i) and (j) of that section. Paragraph (i) of that section provides that the Department may refer alleged violations

of the act by financial institutions to an appropriate financial regulatory agency, and states that such agency may take whatever action it deems appropriate. OFCCP considers this provision unnecessary at this time, and therefore does not propose to carry it forward. Paragraph (j) states an enforcement policy under which the Department will not debar financial institutions from future Federal deposit or share insurance, or cancel, terminate or suspend existing Federal deposit or share insurance. OFCCP wishes to reassure the public that it does not intend to debar or cancel a financial institution's deposit or share insurance. This has been OFCCP's long-standing policy, even in the absence of a regulation mandating that result. Indeed, OFCCP has repeatedly stated on the record in litigation regarding financial institutions that it does not seek debarment or cancellation of deposit and share insurance. OFCCP will maintain that policy. Upon reconsideration, however, OFCCP believes that it is unnecessary to specify this policy in the regulations. The regulations generally do not specify the precise manner in which the agency will exercise its enforcement powers with regard to particular types of contractors.

Proposed paragraph (b), which pertains to hearing practice and procedure under the act, is derived from § 60–741.29(b) of the current section 503 regulations. Proposed paragraph (b)(1), similar to current paragraph (b)(1), provides that hearings conducted under the act shall be governed by the hearing rules applicable to enforcement of Executive Order 11246 (41 CFR part 60–30). Proposed paragraph (b)(1), revising current paragraph (b)(1), states that the rules of evidence set out in the hearing rules applicable to the Department's Administrative Law Judges shall also apply to such hearings. These rules, which were issued in 1990, are generally applicable to the Department's formal adversarial adjudications. In contrast to the current regulation, proposed paragraph (b)(1) requires that the Department's final administrative order under a section 503 case be issued within one year from the date of the issuance of the Administrative Law Judge's recommended decision, or the submission of the parties' exceptions and responses to exceptions to such decision (if any), whichever is later. OFCCP believes that this time limit is needed in order to ensure that aggrieved individuals obtain expeditious relief.

Proposed paragraph (b)(2), which designates the specific officials in the Office of the Solicitor who may file administrative complaints, corresponds to the last sentence of current paragraph (b)(1). This proposed paragraph incorporates some changes in nomenclature.

Proposed paragraph (b)(3), which incorporates conforming changes to the terminology in the hearing rules for purposes of part 60–741, is substantially identical to current paragraph (b)(2).

In order to further uniformity with the Executive Order program, the proposal drops a provision contained in the current regulations (§ 60–741.29(b)(3)) to the effect that the Assistant Secretary for Employment Standards, rather than the Secretary, shall issue final administrative decisions in section 503 cases. Accordingly, under the proposal, the Secretary will issue such decisions.

*Section 60–741.66 Sanctions and Penalties*

Paragraphs (a) and (b), which respectively specify that OFCCP may seek to withhold progress payments on a contract or terminate a contract to enforce compliance with the act, are substantially identical to current §§ 60–741.28(c) and (d). Similarly, proposed paragraph (d), which provides that the contractor shall be provided an opportunity for a formal hearing before the imposition of sanctions or penalties, is substantially similar to current § 60–741.29(a). However, proposed paragraph (c)—which provides that a contractor may be debarred from future contracts for either a fixed period of time not exceeding three years or an indefinite period of time—contrasts with the current regulations, which permit only indefinite-period debarments. In this regard, the current regulations (at § 60–741.28(e)) simply establish authority for the imposition of debarments, and (at § 60–741.50) provide that a debarred contractor may be reinstated as an eligible contractor by demonstrating that it has established and will continue to carry out employment practices in compliance with the act.

OFCCP intends to reserve the use of fixed-period debarments for aggravated or willful violations, including significant violations of recordkeeping and other "paper" requirements. OFCCP believes that the use of fixed-period debarments will serve as a more effective deterrent in these cases—especially where only recordkeeping and other "paper" violations are at issue—than the current practice of reinstating the contractor upon its demonstration of compliance. Under the current procedure the contractor may be reinstated without incurring any economic loss for a violation of a "paper" requirement (e.g., a contractor which has failed to develop an AAP can simply do so to be eligible for reinstatement, provided that it can demonstrate that it will remain in compliance). As discussed below, pursuant to proposed § 60–741.68, a contractor debarred for a fixed term will not be automatically reinstated upon such a showing. In making his or her determination as to whether reinstatement of such a contractor is appropriate under proposed § 60–741.68, the Director shall additionally consider, among other factors, the severity of the violation which resulted in the debarment and whether the contractor's reinstatement would impede the effective enforcement of the act or this part.

The proposal drops the provision contained in current and § 60–741.27 that noncompliance with the contractor's affirmative action clause obligations is a ground for taking appropriate action for noncompliance. This issue is already addressed in proposed § 60–741.66.

*Section 60–741.67 Notification of Agencies*

This proposed section, which provides that OFCCP shall ensure that the heads of all agencies are notified of debarments, is substantially similar to the first sentence of current § 60–741.30, which requires the Director to notify agencies "of any action for noncompliance taken against a contractor." However, in contrast to the proposal, current § 60–741.30 also addresses the granting by a contracting agency of waivers in the national interest. This provision is not carried forward, because, as discussed above (see discussion regarding proposed § 60–741.4(b)(1)), OFCCP unilaterally grants such waivers, and no longer shares enforcement responsibilities under Section 503 with other agencies.

Moreover, the proposal drops current § 60–741. 31, which requires the Director to distribute a list of debarred contractors to all executive departments and agencies. This function is currently performed by the General Services Administration. The 1980 final rule would have required (at § 60–1.30) that OFCCP promptly notify the Comptroller General of the United States regarding contract cancellations and debarments. OFCCP, which currently follows this practice, does not believe it necessary to incorporate this provision into the regulations. Further, that section of the final rule would have required that OFCCP take appropriate steps to notify prime contractors of the debarred contractor's ineligibility for

subcontracts. Upon reconsideration, OFCCP concludes that the incidence of prime contractors contracting with debarred firms is not significant enough to justify the administrative burdens this provision would place on the agency.

*Section 60–741.68 Reinstatement of Ineligible Contractors*

This section provides that a contractor that is debarred for an indefinite period may request reinstatement at any time, and that a contractor debarred for a fixed period may request reinstatement after six months. In the case of either type of debarment the contractor is required to show that it has established and will carry out employment practices in compliance with the act. Additionally, in determining whether reinstatement is appropriate for a contractor that has been debarred for a fixed period, the Director also shall consider such factors as the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history and whether the contractor's reinstatement would impede the effective enforcement of the act or this part. The section is derived from current § 60–741.50. The current regulation, in contrast to the proposal, does not address fixed-period debarments and does not provide the contractor an opportunity to appeal a denial of its request for reinstatement.

As discussed above, OFCCP believes that the use of fixed-term debarments is necessary to provide an effective deterrent with regard to aggravated or willful violations, including "paper" requirements violations (see discussion regarding proposed § 60–741.66(c)). Thus, contractors that have committed such violations should not be reinstated based merely upon a showing that they are and will remain in compliance, as in the case of indefinite-term debarments. Rather, in addition to this showing, the Director's determination should be made on a case-by-case basis after consideration of the additional specified factors. OFCCP believes that imposing a mandatory six-month waiting period during which the reinstatement request may not be submitted will help deter such violations. The proposed appeal procedure in paragraph (b) for contractors whose reinstatement requests are denied is intended to ensure that contractors' requests receive full and fair consideration. The proposal adopts some of the 1980 final rule's reinstatement procedures (§ 60–1.31). For instance, similar to the final rule, the proposal specifies that the contractor may be subject to a compliance review before it is reinstated, and that the matter may be referred to an Administrative Law Judge before a final determination is made on the reinstatement request. In contrast to the final rule, the proposal permits the contractor to submit a petition to the Secretary appealing a denial of a reinstatement request. The final rule would have provided for a review by the Secretary (pursuant to the post-hearing procedures set out in 41 CFR part 60–30) of the Director's denial of a request only where the Director decided to remand the matter to an Administrative Law Judge. The final rule would have established some additional detailed procedures that OFCCP, upon reconsideration, does not believe need be incorporated into the regulations.

*Section 60–741.69 Intimidation and Interference*

Currently, the regulations provide (at § 60–741.51) that the sanctions and penalties contained therein may be exercised against any contractor which fails to ensure no person intimidates, threatens, coerces or discriminates against any individual because he or she files a complaint or otherwise participates in compliance activity under the act. The proposal contains a similar prohibition but specifies that the contractor itself shall not engage in such activities and that the contractor shall ensure that all persons under its control do not do so, that the prohibition applies with respect to participation in compliance activities under a Federal, State and local law which requires equal opportunity for the disabled and that harassment is also prohibited. Moreover, the proposal states that the prohibition applies with respect to an individual's opposition to any practice that is unlawful under the act or similar Federal, State or local laws, and to the exercise of any other right protected by the act. The proposal is substantially similar to the counterpart provision in the 1980 final rule (§ 60–1.28). The intent of the proposal is to incorporate strengthened provisions that ensure that individuals fully enjoy all rights protected under the act, the regulations and comparable Federal, State and local laws without the threat of harassment or intimidation.

*Section 60–741.70 Disputed Matters Related to Compliance With the Act*

This section clarifies that the regulations govern disputes relative to compliance under the act but not other incidental disputes such as those relating to contract costs connected with the contractor's efforts to comply with the act. The proposal is substantially identical to current § 60–741.32.

**Subpart E—Ancillary Matters**

*Section 60–741.80 Posting of Notices*

This section provides that the contractor is required to post its equal opportunity notice regarding the rights of the disabled, and that the notice shall inform applicants and employees of the contractor's obligation to refrain from harassment or intimidation, as specified in proposed § 60–741.69. Currently, § 60–741.6(g)(9) provides that the contractor (as a suggested method of disseminating its equal opportunity policy) "should" post an equal opportunity notice (which should include a statement regarding the more limited prohibitions relating to intimidation and interference contained in current § 60–741.51). OFCCP believes that the posting of notices is important in ensuring the effective enforcement of the act, and therefore proposes to make the obligation mandatory.

*Section 60–741.81 Recordkeeping*

Under the current regulations (§ 60–741.52(a)), contractors are required to maintain for one year records relating to complaints and actions taken by the contractor in connection with such complaints. Paragraph (a) of the proposal significantly expands this obligation in several ways: first, it makes the record retention obligation applicable to any personnel or employment record made or kept by the contractor, and sets out a listing of examples of the types of records that must be retained. This provision conforms to the analogous recordkeeping requirement applicable to title VII of the Civil Rights Act of 1964 and the ADA (29 CFR 1602.14(a); amended, 56 FR 35753, July 26, 1991). (Thus, contractors with 15 or more employees, i.e., those that are covered by the title VII of the Civil Rights Act, are already required to comply with this requirement.) OFCCP proposes this change because it believes that to monitor and enforce the act effectively, it must be assured that it can obtain all of the contractor's personnel records (not only those involving complaints). Access to these records will better enable OFCCP effectively to investigate compliance with the act by, for instance, allowing it to evaluate the contractor's employment policies and practices with respect to disabled applicants and employees in comparison to policies and practices that have been applied to similarly situated applicants and employees who are not disabled.

Second, proposed paragraph (a) extends the required record retention period from one to two years. OFCCP believes that a two-year period is the minimum necessary to provide some reasonable assurance that relevant records will be available during a compliance review. OFCCP normally does not conduct a compliance review of a particular contractor more frequently than once every two years. Moreover, it is OFCCP's general practice to review the contractor's employment practices dating back up to two years prior to the initiation of a compliance review and to assess liability for discriminatory practices dating back two years. OFCCP requests that the public submit comments on the types of burdens, if any, that may result from the proposed extension of the record retention period.

Third, proposed paragraph (a) requires that when a contractor has been notified that a complaint has been filed, that a compliance review has been initiated or that an enforcement action has been commenced, the contractor shall preserve all relevant personnel records until the final disposition of the action. This provision conforms to the corresponding recordkeeping requirement applicable to the ADA and title VII. The purpose of this requirement is obvious—to ensure that OFCCP can obtain all relevant documents during a compliance investigation or enforcement action.

Proposed paragraph (b), which is generally consistent with current § 60–741.52(b), provides that the failure to preserve the records required by proposed paragraph (a) constitutes noncompliance with the act. Additionally, proposed paragraph (b), in a provision that is not paralleled in the current regulations, states that where a contractor has destroyed or failed to preserve required records, there shall be a presumption that such records would have been unfavorable to the contractor. Paragraph (b) further specifies, however, that the presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of its control. This provision is consistent with § 632.3(b)(2)(ii) of EEOC's Compliance Manual. The intent of this provision is to deter contractors from deliberate attempts to frustrate OFCCP's compliance monitoring and enforcement efforts by destroying or failing to preserve records. The adverse inference established by paragraph (b) would be used by OFCCP in both investigations of compliance and in enforcement litigation.

Proposed paragraph (c), which is not paralleled in the current regulations, clarifies that the contractor is obligated to preserve only those records which are created or kept on or after the effective date of the regulations.

*Section 60–741.82 Access to Records*

This section provides that the contractor shall permit OFCCP access to its place of business in order to conduct investigations and to inspect and copy relevant records, and that the information obtained in this manner shall be used only in connection with the administration of the act and the ADA. With the exception of its reference to the ADA, the proposal is generally consistent with the current corresponding section 503 regulation (§ 60–741.53). For the sake of consistency and clarity, this section tracks the language in the parallel Executive Order regulation (41 CFR 60–1.43). The proposal to permit the information obtained in connection with the administration of the ADA is necessary in light of OFCCP's shared enforcement responsibility for the ADA under its coordination regulation issued jointly with EEOC. See discussion above.

*Section 60–741.83 Labor Organizations and Recruiting and Training Agencies*

The proposal provides at paragraph (a) that when a revision of a collective bargaining agreement may be required to conform it to the requirements of the section 503 regulations, labor organizations which are parties to such an agreement shall be given adequate opportunity to present their views to OFCCP. Paragraph (b) states that OFCCP shall make efforts to cause labor organizations involved in work under contracts to cooperate in the implementation of the act. The proposal is substantially identical to the current regulations at § 60–741.9. Similarly, proposed paragraphs (a) and (b) are substantially identical to §§ 60–1.9(c)(2) and (a), respectively, of the 1980 final rule. However, the 1980 final rule would have implemented some additional provisions: § 60–1.9(b) of the rule states that the Director of OFCCP may hold hearings with regard to the practices and policies of labor organizations to ensure compliance with section 503; § 60–1.9(c)(1) provides that collective bargaining representatives shall be given written notice of any on-site compliance investigations; and § 60–1.9(d) states that the Director may notify any Federal, State or local agency of his or her conclusions with respect to any labor organization's failure to cooperate with the implementation of the act, and that he or she may notify appropriate Federal agencies regarding violations of Federal law. Upon further consideration, OFCCP does not believe these additional provisions need be incorporated into the regulations.

*Section 60–741.84 Rulings and Interpretations*

The proposal, which provides that rulings and interpretations of the act and the regulations shall be made by the Director, contrasts with the corresponding current regulation (§ 60–741.54), which provides that the Secretary or his or her designee shall perform this function. The proposal designates the Director as the responsible official in order to reflect current OFCCP practice.

*Section 60–741.85 Effective Date*

The first sentence of this provision specifies when the regulations take effect, and that they do not apply retroactively. The second sentence is substantially identical to the last sentence of current § 60–741.5(a) (Applicability of the affirmative action program requirement).

**Appendix A—Guidelines Regarding Positions Engaged in Carrying Out a Contract**

As previously noted in the discussion of § 60–741.4(a)(2)(i)(A), the proposal adds a new appendix that addresses prong A of the regulatory test for determining which of the contractor's employees are engaged in carrying out a Government contract. The appendix is intended to expand upon and codify the principles set forth in the proposed rule and preamble, so as to provide contractors with as much guidance as is possible in the application of this important new standard.

**Appendix B—Guidelines on the Duty to Provide Reasonable Accommodation**

It has been OFCCP's experience that one of the most difficult issues that contractors encounter in attempting to comply with section 503 relates to the duty to provide reasonable accommodation, and that the absence of readily accessible clear and concise guidance on the subject has contributed to this difficulty. The intent of proposed appendix B is to provide such guidance, which is not contained in the current regulations. As stated at the end of the appendix, it is largely derived from, and is consistent with, the discussion on the duty to provide reasonable accommodation contained in the EEOC regulations' appendix—which, in turn, is drawn in substantial part from the

ADA's legislative history. (The second paragraph of the proposed appendix, however, contains a discussion regarding the contractor's affirmative action duties pursuant to proposed §§ 60–741.42 and 60–741.44(d) which is not paralleled in the EEOC appendix.)

For the sake of brevity, proposed appendix B condenses and summarizes the most significant portions of the discussion contained in the EEOC appendix regarding the reasonable accommodation duty. The relevant portions of the EEOC appendix are those that relate to the failure to make a reasonable accommodation (§ 1630.9) at 56 FR 35747–49 and to the definitions for "reasonable accommodation" (§ 1630.2(o)) at 56 FR 35744 and "undue hardship" (§ 1630.2(p)) at 56 FR 35744–45. Additionally, the proposal incorporates a discussion from the ADA's House Education and Labor Committee Report (at pp. 62–63) that is not incorporated into the EEOC's appendix. The discussion provides some practical examples of methods that may be used to carry out the reasonable accommodation duty (e.g., resources to consult to obtain assistance and specific types of accommodations for particular disabilities). Moreover, the proposed appendix (in the next to last paragraph) provides specific guidance on the issue of providing reasonable accommodation with respect to the employment application process; this discussion is drawn from Appendix C of OFCCP's December 30, 1980, proposed rule (45 FR 86214).

**Appendix C—Invitation to Self-Identify**

This proposed appendix provides an acceptable form of the invitation to self-identify that contractors may provide to applicants and employees pursuant to proposed § 60–741.42. It is substantially similar to the current appendix B. However, the proposal incorporates a number of changes to conform to the requirements of proposed § 60–741.42, as well as other clarifying revisions. For instance, the proposal clarifies that the information submitted to the contractor will be used to assist it in placing the individual in an appropriate position and in making appropriate accommodations, and that the information will be used only in accordance with the act and the regulations; it also specifies that the contractor should incorporate into the invitation a brief provision summarizing the relevant portion of its AAP.

**Appendix D—Review of Personnel Processes**

Proposed Appendix D sets out an example of an appropriate set of procedures that contractors may use to facilitate a review by the contractor and the Government of the contractor's implementation of its duty to evaluate its personnel processes pursuant to proposed § 60–741.44(b). (Section 60–741.44(b) requires the contractor to ensure that its personnel processes provide for careful consideration of the qualifications of applicants and employees with known disabilities for employment opportunities.) This appendix is generally consistent with current Appendix C, which sets out procedures that contractors may use to meet the requirements of current § 60–741.6(b). However, the proposal drops a provision contained in the current appendix (paragraph 3) which states that, in cases where a disabled applicant or employee is rejected for an employment opportunity, the contractor should append to the individual's application or personnel form a statement comparing the qualifications of the rejected individual with those of the person selected for the opportunity. OFCCP proposes to omit this requirement because it has not provided sufficient assistance to OFCCP in its enforcement and monitoring efforts under the act to justify the associated burden on contractors.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this proposed rule is not a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required. This conclusion is based on the fact that this proposed rule does not substantively change the existing obligation of Federal contractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified individuals with disabilities. For instance, although, the rule generally conforms the existing section 503 regulations' nondiscrimination provisions to the regulations published by the EEOC implementing title I of the ADA, it does not significantly alter the substance of the existing nondiscrimination provisions.

*Regulatory Flexibility Act*

The proposed rule, if promulgated, will clarify existing requirements for Federal contractors. In view of this fact and because the proposed rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

*Paperwork Reduction Act.*

The proposed rule establishes new recordkeeping provisions that did not previously exist. The proposed rule extends the current one-year record retention period to two years and makes this retention obligation applicable to a broader range of records; requires that a contractor determine which of its positions are covered by the rule and make a record of its determination that includes an explanation of the basis for its determination; requires that, for purposes of confidentiality, medical information obtained regarding the medical condition or history of any applicant or employee be collected and maintained on separate forms and in separate medical files; and requires those contractors who, for affirmative action purposes, choose to invite applicants and employees to identify themselves as disabled to maintain a separate file on such applicants and employees.

OFCCP estimates that, on average, it will require service and supply contractors four hours per establishment to determine and record which of its positions are covered by the proposed rule, resulting in a total increase of 1.1 million paperwork burden hours for these contractors (it is estimated that coverage determinations would have to be made at 89,093 establishments). Further, OFCCP estimates that construction contractors will each require about 15 minutes to make this determination, and that they will incur a total of 25,000 additional paperwork burden hours (determinations would have to be made by about 100,000 contractors). OFCCP does not believe that other recordkeeping requirements created by this proposal will result in a net increase in burden hours as compared to the current regulation.

These recordkeeping requirements have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Written comments on the recordkeeping requirements

should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards, Washington, DC 20503.

**List of Subjects in 41 CFR Part 60–741**

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Handicapped, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 13th day of October, 1992.

**Lynn Martin,**

*Secretary of Labor.*

**Judith Sotherlund,**

*Deputy Assistant Secretary for Employment Standards.*

**Jaime Ramon,**

*Director, Office of Federal Contract Compliance Programs.*

Accordingly, with respect to the rule amending 41 CFR chapter 60 published on December 30, 1980 (45 FR 86216), which was delayed indefinitely at 46 FR 42865, the revision of part 60–741 is proposed to be withdrawn, and in parts 60–1 and 60–30, all references to section 503 of the Rehabilitation Act are proposed to be withdrawn; with respect to title 41 of the Code of Federal Regulations, chapter 60 is proposed to be amended as set forth below.

Part 60–741 is revised to read as follows:

## PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

### Subpart A—Preliminary Matters, Equal Opportunity Clause



### Subpart B—Discrimination Prohibited



### Subpart C—Affirmative Action Program



### Subpart D—General Enforcement and Complaint Procedures



### Subpart E—Ancillary Matters



### Appendix A to Part 60–741—Guidelines Regarding Positions Engaged in Carrying Out a Contract.

### Appendix B to Part 60–741—Guidelines on the Duty to Provide Reasonable Accommodation

### Appendix C to Part 60–741—Invitation to Self-Identify

### Appendix D to Part 60–741—Review of Personnel Processes

**Authority:** Sec. 503, Pub. L. 93–112, 87 Stat. 393 (29 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); sec. 103(d)(2)(B), Pub. L. 99–506, 100 Stat. 1810, 1843, 1844 (29 U.S.C. 706); sec. 9, Pub. L. 100–259, 102 Stat. 31–32 (29 U.S.C. 706); sec. 512, Pub. L. 101–336, 104 Stat. 377 (29 U.S.C. 706); and E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

## Subpart A—Preliminary Matters, Equal Opportunity Clause

### § 60–741.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to set forth the standards for compliance with section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), which requires Government contractors and subcontractors, in employing persons to carry out the contract, to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(b) *Applicability.* This part applies to all Government contracts and subcontracts in excess of $2500 which are performed within the United States for the purchase, sale or use of personal property or nonpersonal services (including construction): *Provided,* That subpart C of this part applies only as described in § 60–741.40(a). Compliance by the contractor with the provisions of this part will not necessarily determine its compliance with other statutes, and compliance with other statutes will not necessarily determine its compliance with this part: *Provided,* That compliance shall also satisfy the employment provisions of the Department of Labor's regulations implementing section 504 of the Rehabilitation Act of 1973 (see 29 CFR 32.2(b)) when the contractor is also subject to those requirements.

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), or the regulations issued by the Equal Employment Opportunity Commission pursuant to that title (29 CFR part 1630). The Interpretive Guidance on Title I of the Americans with Disabilities Act set out as an appendix to (29 CFR Part 1630 issued pursuant to that title may be relied upon for guidance in interpreting the parallel provisions of this part.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures under any Federal law or the law of any State or political subdivision that provides greater or equal protection for the rights of individuals with disabilities as compared to the protection afforded by this part. It may be a defense to a charge of violation of this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

### § 60–741.-2 Definitions.

(a) *Act.* Means the Rehabilitation Act of 1973, Pub. L. 93–112 (29 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516 (29 U.S.C. 706); sec. 103(d)(2)(B), Pub. L. 99–506 (29 U.S.C. 706); sec. 9, Pub. L. 100–259 (29 U.S.C. 706); and sec. 512, Pub. L. 101–336 (29 U.S.C. 706).

(b) *Equal opportunity clause.* Means the contract provisions set forth in § 60–741.5, "Equal opportunity clause."

(c) *Secretary.* Means the Secretary of Labor, U.S. Department of Labor or his or her designee.

(d) *Director* means the Director of the Office of Federal Contract Compliance Programs (OFCCP) of the United States Department of Labor or his or her designee.

(e) *Government* means the Government of the United States of America.

(f) *United States*, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(g) *Recruiting and training agency* means any person who refers workers to any contractor, or who provides or supervises apprenticeship or training for employment by any contractor.

(h) *Contract* means any Government contract or subcontract.

(i) *Government contract* means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services (including construction). The term "Government contract" does not include agreements in which the parties stand in the relationship of employer and employee, and federally assisted contracts.

(j) *Modification* means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments and extensions.

(2) *Contracting agency* means any department, agency, establishment or instrumentality of the United States, including any wholly owned Government corporation, which enters into contracts.

(3) *Person*, as used in paragraphs (i) and (l) of this section, means any natural person, corporation, partnership or joint venture, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(4) *Nonpersonal services*, as used in paragraphs (i) and (l) of this section, includes, but is not limited to, the following: Utility, construction, transportation, research, insurance, and fund depository.

(5) *Construction*, as used in paragraphs (i) and (l) of this section, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(6) *Personal property*, as used in paragraphs (i) and (l) of this section, includes supplies and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements).

(j) *Contractor* means, unless otherwise indicated, a prime contractor or subcontractor having a contract in excess of $2,500.

(k) *Prime contractor* means any person holding a contract in excess of $2,500, and, for the purposes of subpart D of this part, "General Enforcement and Complaint Procedures," includes any person who has held a contract subject to the act.

(l) *Subcontract* means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(m) *Subcontractor* means any person holding a subcontract and, for the purposes of subpart D of this part, General Enforcement and Complaint Procedures," any person who has held a subcontract subject to the act.

(n) *Individual with a disability.* (1) The term *Individual with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) This part uses the term "individual with a disability" in place of the term "individual with handicaps," which is used in the Rehabilitation Act; the two terms are intended to have identical meanings. (See § 60–741.3 for exceptions to this definition.)

(o) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(p) *Major life activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(q) *Substantially limits.* (1) The term *Substantially limits* means:

(i) Unable to perform a major life activity that is within the normal range of abilities of persons in the general population; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which one who is within the normal range of abilities of persons in the general population can perform the same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of working—

(i) The term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to one who is within the normal range of abilities of persons in the general population. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (q)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of working:

(A) The geographic area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographic area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an

impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographic area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(r) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(s) *Is regarded as having such an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the contractor as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (o) (1) or (2) of this section, but is treated by the contractor as having a substantially limiting impairment.

(t) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 60–741.3 for exceptions to this definition.)

(u) *Essential functions*—(1) *In general.* The term *essential functions* means fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The contractor's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(v) *Reasonable accommodation.* (1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enables an applicant with a disability to be considered for the position such applicant desires; or

(ii) Modifications or adjustments to the work environment, or the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable the contractor's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees without disabilities.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(w) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the contractor, when considered in light of the factors set forth in paragraph (w)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on the contractor, factors to be considered include:

(i) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the contractor, the overall size of the business of the contractor with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the contractor, including the composition, structure and functions of the work force of such contractor, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the contractor; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(x) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by the contractor as requirements which an individual must meet in order to be eligible for the position held or desired.

(y) *Direct threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual with a disability poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to perform safely the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

**§ 60–741.3 Exceptions to the definitions of "individual with a disability" and "qualified individual with a disability."**

(a) *Current illegal use of drugs*—(1) *In general.* The terms "individual with a disability" and "qualified individual with a disability" do not include individuals currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use.

(2) *"Drug" defined.* The term drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(3) *"Illegal use of drugs" defined.* The term *illegal use of drugs* means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as updated pursuant to that act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(4) *Construction.* (i) Nothing in paragraph (a)(1) of this section shall be construed to exclude as an "individual with a disability" or as a "qualified individual with a disability" an individual who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(B) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) In order to be protected by section 503 and this part, an individual described in paragraph (a)(4)(i) of this section must satisfy the requirements of the definition of "qualified individual with a disability."

(5) *Drug testing.* It shall not be a violation of this part for the contractor to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (a)(4)(i) (A) and (B) of this section is no longer engaging in the illegal use of drugs. (See § 60–741.24(b)(1).)

(b) *Alcoholics.*—(1) *In general.* The terms "individual with a disability" and "qualified individual with a disability" do not include an individual who is an alcoholic whose current use of alcohol prevents such individual from performing the essential functions of the employment position such individual holds or desires or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or to the health or safety of the individual or others.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (b)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in paragraph (b)(1) of this section when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to property or the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education and other job-related requirements of such position.

(c) *Contagious disease or infection.*—(1) *In general.* The terms "individual with a disability" and "qualified individual with a disability" do not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of the individual or others or who, by reason of the currently contagious disease or infection, is unable to perform the essential functions of the employment position such individual holds or desires.

(2) *Duty to provide reasonable accommodation.* Nothing in paragraph (c)(1) of this section shall relieve the contractor of its obligation to provide a reasonable accommodation for an individual described in that paragraph when such an accommodation will enable the individual to perform the essential functions of the employment position such individual holds or desires, or when the accommodation will eliminate or reduce the direct threat to the health or safety of the individual or others posed by such individual, provided that such individual satisfies the requisite skill, experience, education and other job-related requirements of such position.

(d) *Transvestites.* Neither the term "individual with a disability" nor the term "disability" shall apply to an individual solely because that individual is a transvestite.

**§ 60–741.4 Coverage and waivers.**

(a) *Coverage.*—(1) *Contracts and subcontracts in excess of $2500.* Contracts and subcontracts in excess of $2500 are covered by the act. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) *Positions engaged in carrying out a contract.* (i) This part applies to all employees who are employed in, and all applicants for, positions that are engaged in carrying out a Government contract. A position is engaged in carrying out a contract if:

(A) The duties of the position include work that fulfills a contractual obligation, or work that is necessary to, or that facilitates, performance of the contract or a provision of the contract; or

(B) The cost or a portion of the cost of the position may be allowed as a cost of the contract under the principles set forth in the Federal Acquisition Regulation at 48 CFR Ch. 1, part 31: *Provided*, That a position shall not be covered by this part by virtue of this provision if the cost of the position is not allocable in whole or in part as a direct cost to any Government contract, and only a de minimis (less than 2%) portion of the cost of the position is allocable as an indirect cost to Government contracts, considered as a group.

(ii) *Application.* Where a contractor or a division or establishment of a contractor is devoted exclusively to Government contract work, all positions within the contractor, division, or establishment are covered by this part.

(iii) *Contractor's responsibility to determine coverage.*

(A) The contractor shall determine which of its positions are covered by this part and shall make a record of its determination.

(B) A contractor subject to the affirmative action program requirements of subpart C of this part shall identify in its affirmative action program for each establishment the positions that are, and the positions that are not, subject to this part, and shall include an explanation of the basis for its determination. If a contractor properly determines that no positions in a particular establishment are covered, it need not prepare an affirmative action program for that establishment, but shall make available upon request an explanation of the basis for its determination.

(C) If a contractor fails to determine which of its positions are covered by this part, it must extend the protections of the Act and this part to all of its positions, until such time as it makes a determination of noncoverage for a

particular position. Such determinations shall be effective prospectively only.

(3) *Contracts and subcontracts for indefinite quantities.* With respect to indefinite delivery-type contracts and subcontracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will not be in excess of $2,500. The applicability of the equal opportunity clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $2,500. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(4) *Work within the United States.* This part applies only to employment within the United States.

(5) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(b) *Waivers*—(1) *Specific contracts and classes of contracts.* The Director may waive the application to any contract of the equal opportunity clause in whole or part when he or she deems that special circumstances in the national interest so require. The Director may also grant such waivers to groups or categories of contracts: where it is in the national interest; where it is found impracticable to act upon each request individually; and where such waiver will substantially contribute to convenience in administration of the act. When a waiver has been granted for any class of contracts, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

(2) *National security.* Any requirement set forth in the regulations of this part shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the contracting agency will notify the Director in writing within 30 days.

**§ 60–741.5 Equal opportunity clause.**

(a) *Government contracts.* Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract):

**Equal Opportunity for Workers With Disabilities**

1. In employing persons to carry out the contract, the contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

i. recruitment, advertising, and job application procedures;

ii. hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. rates of pay or any other form of compensation and changes in compensation;

iv. job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. leaves of absence, sick leave, or any other leave;

vi. fringe benefits available by virtue of employment, whether or not administered by the contractor;

vii. selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. activities sponsored by the contractor including social or recreational programs; and

ix. any other term, condition, or privilege of employment.

2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of $2,500, unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

(b) *Subcontracts.* Each contractor shall include the equal opportunity clause in each of its subcontracts subject to this part.

(c) *Adaption of language.* Such necessary changes in language may be made to the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

(d) *Inclusion of the equal opportunity clause in the contract.* It is not necessary that the equal opportunity clause be quoted verbatim in the contract. The clause may be made a part of the contract by citation to 41 CFR part 60–741.

(e) *Incorporation by operation of the act.* By operation of the act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract and whether or not there is a written contract between the agency and the contractor.

(f) *Duties of contracting agencies.* Each contracting agency shall cooperate with the Director in the performance of his or her responsibilities under the act. Such cooperation shall include insuring

that the equal opportunity clause is included in all covered Government contracts and that contractors are fully informed of their obligations under the act and this part, providing the Director with any information which comes to the agency's attention that a contractor is not in compliance with the act or this part, taking such actions for noncompliance as are set forth in § 60–741.66 as may be ordered by the Director, and responding to requests for information from the Director.

## Subpart B—Discrimination Prohibited

### § 60–741.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(g) Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by the contractor including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

### § 60–741.21 Prohibitions.

The term "discrimination" includes, but is not limited to, the acts described in §§ 60–741.21 and 60–741.23 of this part.

(a) *Disparate treatment.* It is unlawful for a contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual with a disability because of that individual's disability.

(b) *Limiting, segregating and classifying.* Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability. The contractor may not segregate qualified employees with disabilities into separate work areas or into separate lines of advancement.

(c) *Contractual or other arrangements*—(1) *In general.* It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(2) *Contractual or other arrangement defined.* The phrase "contractual or other arrangement or relationship" includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(3) *Application.* This paragraph (c) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(d) *Standards, criteria or methods of administration.* It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(1) Have the effect of discriminating on the basis of disability; or

(2) Perpetuate the discrimination of others who are subject to common administrative control.

(e) *Relationship or association with an individual with a disability.* It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

(f) *Not making reasonable accommodation.* (1) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(2) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(3) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

(g) *Qualification standards, tests and other selection criteria.*—(1) *In general.* It is unlawful for the contractor to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude an individual with a disability or a class of individuals with disabilities because of disability but do not concern an essential function of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions.

(2) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

(h) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, speaking, mobility or other skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, speaking,

mobility or other skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(i) *Compensation.* In offering employment or promotions to individuals with disabilities, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source.

**§ 60–741.22 Direct threat defense.**

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60–741.2(y) defining "direct threat.")

**§ 60–741.23 Medical examinations and inquiries.**

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(b) *Permitted medical examinations and inquiries.*—(1) *Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct voluntary medical examinations and activities, involving voluntary medial histories, which are part of an employee health program available to employees at the work site.

(5) medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees with disabilities as a result of such examinations or inquiries, or as a result of other types of examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part.

(c) *Invitation to self-identify.* The contractor may, for affirmative action purposes, invite applicants and employees to voluntarily inform the contractor whether they believe themselves covered by the act as specified in § 60–741.42.

(d) *Confidentiality and use of medical information.* (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in law enforcement activities, including officials investigating compliance with this part, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

**§ 60–741.24 Drugs and alcohol.**

(a) *Specific activities permitted.* The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) *Drug testing*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of § 60–741.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) *Transportation employees.* Nothing in this part shall be construed to encourage, prohibit, or authorize the otherwise lawful exercise by contractors subject to the jurisdiction of the Department of Transportation of authority to test employees in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (b)(1) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal

use of drugs, is subject to the requirements of §§ 60–741.23(b)(5) and (d).

**§ 60–741.25 Health insurance, life insurance and other benefit plans.**

(a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or contractor that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(b) The contractor may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(c) The contractor may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(d) The contractor may not deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

(e) The activities described in paragraphs (a), (b) and (c) of this section are permitted unless these activities are used as a subterfuge to evade the purposes of this part.

## Subpart C—Affirmative Action Program

**§ 60–741.40 Applicability of the affirmative action program requirement.**

(a) The requirements of this subpart apply to every Government contractor that has 150 or more employees and a contract of $150,000 or more.

(b) Contractors described in paragraph (a) of this section shall, within 120 days of the commencement of a contract, prepare and maintain an affirmative action program at each establishment which employs persons to carry out a Government contract. The affirmative action program shall set forth the contractor's policies and procedures in accordance with this part. This program may be integrated into or kept separate from other affirmative action programs.

(c) The affirmative action program shall be reviewed and updated annually.

(d) The contractor shall submit the affirmative action program within 30 days of a request from OFCCP, unless the request provides for a different time. The contractor shall also make the affirmative action program promptly available on-site upon OFCCP's request.

**§ 60–741.41 Availability of affirmative action program.**

The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

**§ 60–741.42 Invitation to self-identify.**

(a) The contractor may, for affirmative action purposes, invite all applicants and employees to inform the contractor whether they believe that they may be covered by the act and wish to benefit under the affirmative action program. Any such invitation shall summarize the relevant portions of the act and the contractor's affirmative action program. Furthermore, any such invitation shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the act and this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation. The contractor shall maintain a separate file on persons who have self-identified and provide that file to OFCCP upon request. This information may be used only in accordance with this part. (An acceptable form for such an invitation is set forth in Appendix C of this part.)

(b) Nothing in this section shall preclude an employee from informing the contractor at any future time of his or her desire to benefit under the program.

(c) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(d) Nothing in this section shall relieve the contractor from liability for discrimination under the act.

**§ 60–741.43 Affirmative action policy.**

Under the affirmative action obligations imposed by the act contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60–741.20.

**§ 60–741.44 Required contents of affirmative action programs.**

Acceptable affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) *Policy statement.* The contractor shall include its equal opportunity policy statement in its affirmative action program.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype disabled persons in a manner which limits their access to all jobs for which they are qualified. The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government. (Appendix D of this part is an example of an appropriate set of procedures. The procedures in appendix D of this part are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the periodic review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity (such requirements must therefore concern essential functions of the job).

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification standards tend to screen out qualified individuals with disabilities, the standards shall be related to the specific job or jobs for which the individual is being considered

and consistent with business necessity (such requirements therefore shall concern essential functions of the job). The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See section 60–741.2(y) defining "direct threat.")

(d) *Reasonable accommodation to physical and mental limitations.* The contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. If an employee with a known disability is having difficulty performing his or her job, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees with disabilities are not harassed because of disability.

(f) *External dissemination of policy, outreach and positive recruitment.* The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraphs (f) (1) through (7) of this section that are reasonably designed to effectively recruit qualified individuals with disabilities. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraphs (f) (1) through (7) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should enlist the assistance and support of recruiting sources (including State employment security agencies, State vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, State education agencies, labor organizations and organizations of or for individuals with disabilities) for the contractor's commitment to provide meaningful employment opportunities to qualified individuals with disabilities. Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(2) The contractor's recruitment efforts at all schools should incorporate special efforts to reach students with disabilities. The contractor should engage in recruitment activities at educational institutions which participate in training of individuals with disabilities, such as schools for the blind, deaf, or learning disabled. An effort should be made to participate in work-study programs with rehabilitation facilities and schools which specialize in training or educating individuals with disabilities.

(3) The contractor should establish meaningful contacts with appropriate social service agencies, organizations of and for individuals with disabilities, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have authority to approve or disapprove the acceptability of affirmative action programs.

(4) The contractor should include individuals with disabilities when employees are pictured in consumer, promotional or help wanted advertising. Individuals with disabilities should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(5) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(6) The contractor should take positive steps to attract qualified individuals with disabilities not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for individuals with disabilities.

(7) The contractor, in making hiring decisions, should consider applicants with known disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with individuals with disabilities in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop internal procedures such as those listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (g)(2) of this section or that its activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing practices are adequate.

(2) The contractor should implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual.

(ii) Periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified individuals with disabilities. The contractor should schedule special meetings with all employees to discuss policy and explain individual employee responsibilities.

(iii) Publicize it in the company newspaper, magazine, annual report and other media.

(iv) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(v) Discuss the policy thoroughly in both employee orientation and management training programs.

(vi) Meet with union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation.

(vii) Include articles on accomplishments of disabled workers in company publications.

(viii) When employees are featured in employee handbooks or similar publications for employees, include individuals with disabilities.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program.

(ii) Indicate any need for remedial action.

(iii) Determine the degree to which the contractor's objectives have been attained.

(iv) Determine whether individuals with known disabilities have had the opportunity to participate in all company sponsored educational, training, recreational and social activities.

(v) Measure the contractor's compliance with the affirmative action program's specific obligations.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary top management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

**§ 60-741.45 Sheltered workshops.**

Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own work force. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become "qualified individuals with disabilities."

## Subpart D—General Enforcement and Complaint Procedures

**§ 60-741.60 Compliance reviews.**

(a) OFCCP may conduct compliance reviews to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. The compliance review shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made.

(b) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion pursuant to § 60-741.62.

**§ 60-741.61 Complaint procedures.**

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990 (ADA), OFCCP and the Equal Employment Opportunity Commission have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both the act and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part will be processed in accordance with those regulations, which are found at 41 CFR part 60-742, and with this part.

(b) *Place and time of filing.* Any applicant for employment with a contractor or any employee of a contractor may, personally or by an authorized representative, file a written complaint with the Director alleging a violation of the act or the regulations in this part. The complaint may allege individual or class-wide violation(s). Complaints may be filed with the OFCCP, 200 Constitution Avenue, NW., Washington, DC 20210, or with any OFCCP regional, district, or area office. Such complaint must be filed within 300 days from the date of the alleged violation, unless the time for filing is extended by OFCCP for good cause shown.

(c) *Contents of complaints*—(1) *In general.* A complaint must be signed by the complainant or his or her authorized representative and must contain the following information:

(i) Name and address (including telephone number) of the complainant;

(ii) Name and address of the contractor who committed the alleged violation;

(iii) The facts showing that the individual is disabled or has a history of a disability or was regarded by the contractor as having a disability;

(iv) A description of the act or acts considered to be a violation, including the pertinent dates (in the case of an alleged continuing violation, the earliest and most recent date that the alleged violation occurred should be stated); and

(v) Other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted.

(2) *Third party complaints.* A complaint filed by an authorized representative need not identify by name the person on whose behalf it is filed. The person filing the complaint, however, shall provide OFCCP with the name, address and telephone number of the person on whose behalf it is made, and the other information specified in paragraph (c)(1) of this section. During the OFCCP investigation, OFCCP shall verify the authorization of such a complaint by the person on whose behalf the complaint is made. Any such person may request that OFCCP keep his or her identity confidential.

(d) *Incomplete information.* Where a complaint contains incomplete information, OFCCP shall seek the needed information from the complainant. If the information is not furnished to OFCCP within 60 days of the date of such request, the case may be closed.

(e) *Investigations.* The Department of Labor shall institute a prompt investigation of each complaint.

(f) *Resolution of matters.* (1) If the complaint investigation finds no violation of the act or this part, or if the Director decides not to refer the matter to the Solicitor of Labor for enforcement proceedings against the contractor pursuant to § 60-741.65(a)(1), the complainant shall be so notified. The Director, on his or her own initiative, may reconsider his or her determination or the determination of any of his or her designated officers who have authority to issue Notifications of Results of Investigation.

(2) The Director will review all determinations of no violation that involve complaints that are not also cognizable under title I of the Americans with Disabilities Act.

(3) In cases where the Director decides to reconsider the determination of a Notification of Results of Investigation, the Director shall provide prompt notification of his or her intent to reconsider, which is effective upon issuance, and his or her final determination after reconsideration, to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the contractor.

(4) If the investigation finds a violation of the act or this part, OFCCP shall invite the contractor to participate in conciliation discussions to § 60–741.62.

**§ 60–741.62 Conciliation agreements and letters of commitment.**

(a) If a compliance review, complaint investigation or other review by OFCCP finds a material violation of the act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority. The agreement shall also specify the dates for completion of the remedial action; the period shall be no longer than the minimum period necessary to complete the action.

(b) The term "conciliation agreement" does not include "letters of commitment," which are appropriate for resolving minor technical deficiencies.

**§ 60–741.63 Violation of conciliation agreements and letters of commitment.**

(a) When OFCCP believes that a conciliation agreement has been violated, the following procedures are applicable:

(1) A written notice shall be sent to the contractor setting forth the violation alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which OFCCP asserts that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(b) In those cases in which OFCCP asserts that a delay would result in irreparable injury to the employment rights of affected employees or applicants, enforcement proceedings may be initiated immediately without proceeding through any other requirement contained in this chapter.

(c) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

(d) When OFCCP believes that a letter of commitment has been violated, the matter shall be handled, where appropriate, pursuant to § 60–741.64. The violation may be corrected through a conciliation agreement, or an enforcement proceeding may be initiated.

**§ 60–741.64 Show cause notices.**

When the Director has reasonable cause to believe that the contractor has violated the act or this part, he or she may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings or other appropriate action to ensure compliance should not be instituted. The issuance of such a notice is not a prerequisite to instituting enforcement proceedings (see § 60–741.65).

**§ 60–741.65 Enforcement proceedings.**

(a) *General.* (1) If a compliance review, complaint investigation or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions, or any of the above. OFCCP may seek back pay and other make whole relief for aggrieved individuals identified during a complaint investigation or compliance review. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(2) In addition to the administrative proceedings set forth herein, the Director may, within the limitations of applicable law, seek appropriate judicial action to enforce the contractual provisions set forth in § 60–741.5, including appropriate injunctive relief.

(b) *Hearing practice and procedure.* (1) In administrative enforcement proceedings the contractor shall be provided an opportunity for a formal hearing. All hearings conducted under the act and this part shall be governed by the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity Under Executive Order 11246 contained in 41 CFR part 60–30 and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided*, That a final administrative order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any), whichever is later.

(2) Complaints may be filed by the Solicitor, the Associate Solicitor for Civil Rights, Regional Solicitors and Associate Regional Solicitors.

(3) For the purposes of hearings pursuant to this part, references in 41 CFR part 60–30 to "Executive Order 11246" shall mean section 503 of the Rehabilitation Act of 1973, as amended; to "equal opportunity clause" shall mean the equal opportunity clause published at 41 CFR 60–741.5; and to "regulations" shall mean the regulations contained in this part.

**§ 60–741.66 Sanctions and penalties.**

(a) *Withholding progress payments.* With the prior approval of the Director so much of the accrued payment due on the contract or any other contract between the Government contractor and the Federal Government may be withheld as necessary to correct any violations of the provisions of the act or this part.

(b) *Termination.* A contract may be canceled or terminated, in whole or in part, for failure to comply with the provisions of the act or this part.

(c) *Debarment.* A contractor may be debarred from receiving future contracts for failure to comply with the provisions of the act or this part subject to reinstatement pursuant to § 60–741.68. Debarment may be imposed for an indefinite period, or in the case of an aggravated or willful violation, may be imposed for a fixed period of time not to exceed three years.

(d) *Hearing opportunity.* An opportunity for a formal hearing shall be

afforded to a contractor before the imposition of any sanction or penalty.

**§ 60-741.67 Notification of agencies.**

The Director shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

**§ 60-741.68 Reinstatement of ineligible contractors.**

(a) *Application for reinstatement.* A contractor debarred from further contracts for an indefinite period under the act may request reinstatement in a letter filed with the Director at any time after the effective date of the debarment; a contractor debarred for a fixed period may make such a request following the expiration of six months from the effective date of the debarment. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the act and this part. Additionally, in determining whether reinstatement is appropriate for a contractor debarred for a fixed period, the Director also shall consider, among other factors, the severity of the violation which resulted in the debarment, the contractor's attitude towards compliance, the contractor's past compliance history, and whether the contractor's reinstatement would impede the effective enforcement of the act or this part. Before reaching a decision, the Director may conduct a compliance review of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Director shall issue a written decision on the request.

(b) *Petition for review.* Within 30 days of its receipt of a decision denying a request for reinstatement, the contractor may file a petition for review of the decision with the Secretary. The petition shall set forth the grounds for the contractor's objections to the Director's decision. The petition shall be served on the Director and the Associate Solicitor for Civil Rights and shall include the decision as an appendix. The Director may file a response within 14 days to the petition. The Secretary shall issue the final agency decision denying or granting the request for reinstatement. Before reaching a final decision, the Secretary may issue such additional orders respecting procedure as he or she finds appropriate in the circumstances, including an order referring the matter to the Office of Administrative Law Judges for an evidentiary hearing where there is a material factual dispute that cannot be resolved on the record before the Secretary.

**§ 60-741.69 Intimidation and interference.**

(a) The contractor shall not harass, intimidate, threaten, coerce, or discriminate against, any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

(3) Opposing any act or practice made unlawful by the act or this part or any other Federal, State or local law requiring equal opportunity for disabled persons; or

(4) Exercising any other right protected by the act or this part.

(b) The contractor shall ensure that all persons under its control do not engage in such harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by the Director against any contractor who violates this obligation.

**§ 60-741.70 Disputed matters related to compliance with the act.**

The procedures set forth in the regulations in this part govern all disputes relative to the contractor's compliance with the act and this part. Any disputes relating to issues other than compliance, including contract costs arising out of the contractor's efforts to comply, shall be determined by the disputes clause of the contract.

## Subpart E—Ancillary Matters

**§ 60-741.80 Posting of notices.**

The contractor shall post its equal opportunity policy for individuals with disabilities on company bulletin boards, including a statement that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion or discrimination because they have engaged in or may engage in any of the following activities:

(a) Filing a complaint;

(b) Assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of section 503 of the Rehabilitation Act of 1973 (section 503) or any other Federal, State or local law requiring equal opportunity for disabled persons;

(c) Opposing any act or practice made unlawful by section 503 or its implementing regulations (41 CFR part 60-741) or any other Federal, State or local law requiring equal opportunity for disabled persons; or

(d) Exercising any other right protected by section 503 or its implementing regulations (41 CFR part 60-741).

**§ 60-741.81 Recordkeeping.**

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of two years from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records relating to requests for reasonable accommodation; the results of any physical examination; job advertisements and postings; applications and résumés; tests and test results; interview notes; records regarding coverage determinations required under § 60-741.4(a)(2)(iii); and other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance review has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance review or action until final disposition of the complaint, compliance review or action. The term "personnel records relevant to the complaint, compliance review or action" would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

(b) *Failure to Preserve Records.* Failure to preserve complete and accurate records as required by paragraph (a) of this section constitutes noncompliance with the contractor's obligations under the act and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there shall be a presumption that the information

destroyed or not preserved would have been unfavorable to the contractor: *Provided*, That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(c) The requirements of this section shall apply only to records made or kept on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE].

**§ 60–741.82 Access to records.**

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance reviews and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. Information obtained in this manner shall be used only in connection with the administration of the act, the administration of the Americans With Disabilities Act of 1990 (ADA) and in furtherance of the purposes of the act and the ADA.

**§ 60–741.83 Labor organizations and recruiting and training agencies.**

(a) Whenever performance in accordance with the equal opportunity clause or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts and subcontracts to cooperate with, and to assist in, the implementation of the purposes of the act.

**§ 60–741.84 Rulings interpretations.**

Rulings under or interpretations of the act and this part shall be made by the Director.

**§ 60–741.85 Effective date.**

This part shall become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE], and shall not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs within 120 days after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE].

## Appendix A to Part 60–741—Guidelines Regarding Positions Engaged in Carrying Out a Contract

As stated in § 60–741.4(a)(2), part 60–741 applies to all employees who are employed in, and all applicants for, positions that are engaged in carrying out a Government contract. The regulatory definition has two prongs. Under § 60–741.4(a)(2)(i)(A) ("prong A"), positions are engaged in carrying out a Government contract if their duties include work that fulfills a contractual obligation, or work that is necessary to, or that facilitates, performance of the contract or a provision of the contract. Alternatively, under § 60–741.4(a)(2)(i)(B) ("prong B"), positions are deemed to be engaged in carrying out a Government contract if, pursuant to principles set forth in the Federal Acquisition Regulation (FAR) at 48 CFR Ch. 1, part 31, the cost of the position or a portion of its cost is allocable to a contract as a direct cost, or 2 percent or more of the cost is allocable as an indirect cost to Government contracts considered as a group.

This appendix provides guidance as to the application of prong A of the definition.

The regulatory definition includes positions whose duties involve work that fulfills a contractual obligation. Such work includes work producing the goods or providing the services that are the object of the contract and also work that fulfills ancillary contract obligations. For example, if a contract requires the contractor to keep certain cost records or to meet certain quality control standards, employees engaged in such functions are fulfilling a contractual obligation.

Positions are also included if their duties include work that is necessary to or that facilitates performance of the contract. The inclusion of work of this character is intended to reflect the practical reality that performance of a contract generally requires the cooperation of a variety of individuals engaged in auxiliary and related functions beyond direct production of the goods or provisions of the services that are the object of the contract.

To give one example, a contract for production and sale of goods to the Government commonly requires the work not only of the production employees assembling the goods, but also of those engaged in functions such as repairing the machinery used in producing the goods; maintaining the plant and facilities; assuring quality control and security; storing the goods after production; delivering them to the Government; hiring, paying, and providing personnel services for the employees engaged in contract-related work; keeping financial and accounting records; performing related office and clerical tasks; and supervising or managing the employees engaged in such tasks. This list is not intended to be exhaustive, but only to illustrate that a variety of functions may commonly be involved in carrying out a contract.

Whether a particular position is engaged in carrying out the contract depends on the facts as to the nature of its actual duties and their relationship to contract performance. A position is included if its duties include work that furthers or contributes to the performance of the contract. The work need not be essential or indispensable to performance of the contract. It is sufficient that it is useful or that it benefits or contributes to carrying out the contract.

Nor is it material that the work is not required by an express contract term. For example, a contract to provide transportation services may not explicitly incorporate terms requiring maintenance and repair of the means of transportation to keep them in safe operating condition. Such work, however, is implicitly necessary to carry out the contract.

It is irrelevant that the contractor could have performed the contract some other way, without making use of a particular function or particular employees, if the way the contractor chose to carry out the contract does in fact make use of them. For example, if a contractor employs three quality control inspectors, or uses three quality control processes, to monitor the manufacture of goods for sale to the Government, all three are involved in carrying out the contract, notwithstanding any claim that two would have been sufficient. If a contractor manufactures goods at its plant in St. Louis for delivery in Chicago, employees transporting the goods are carrying out the contract, regardless whether the contractor could have made the goods locally at its plant in Chicago. If a contractor employs security guards or watchmen to protect its plant producing goods for the Government from vandalism or theft of equipment, because in its business judgment it is prudent to do so, employees engaged in those tasks are contributing to performance of the contract and are covered.

If a position's regular duties include work that contributes to the performance of the contract, and the contract meets the act's dollar threshold for coverage, it is irrelevant that such work is only a portion of the position's total duties or that it takes only a small amount of time. For example, a Government agency may contract to lease a photocopying machine under terms obliging the leasing company to provide repair and maintenance service. The technician assigned to provide such service is "carrying out the contract" regardless of whether he or she provides similar service for numerous private customers and spends only a small fraction of his or her time working on the agency's machine. Similarly, individuals working on an assembly line manufacturing automobiles, a portion of which are sold under contract to the Government, while the bulk are sold commercially, are covered. That 95% of the vehicles they produce are sold elsewhere does not negate the fact that the individuals are carrying out the contract to make vehicles for the Government.

A group of employees may also perform duties that simultaneously contribute to performance of both Government and non-

Government contracts. In this situation, if the contract exceeds $2500 and the duties of the position in fact contribute to carrying out the contract, the position is covered. For example, the Government may contract with airline carriers to provide transportation to Federal employees performing official duties. The contract is performed through the work of employees including the flight crew, the ground maintenance crew, the baggage handlers, the ticketing agents, the airport and gate staff, and other corporate personnel. Federal employees probably typically form only a small percentage of an airline's passengers. Nonetheless, the pilots flying the planes and the other staff are carrying out the terms of the contract.

These principles are illustrated by the final decision of the Department in *OFCCP* v. *Monongahela Railroad Co.*, 85–OFC–2 (Administrative Law Judge Recommended Decision, April 2, 1986), *aff'd*, (Deputy Under Secretary for Employment Standards, March 11, 1987). *Monongahela* involved the interpretation of the term "necessary" in the context of the definition of the term "subcontract" under part 60–741. "Subcontract" is defined in relevant part as any agreement for the furnishing of supplies or services "which in whole or in part is necessary to the performance of any one or more [Government] contracts." The decision held that a railroad company's transport of coal that was used by a power company to generate electricity was "necessary" to the performance of the power company's obligation to supply the Government with power and that the railroad company was therefore a covered "subcontractor." The decision reached this result even though numerous other carriers also transported coal to the power company, the coal that the carrier delivered was used to generate electricity for the Government and for nongovernmental customers alike, and the power company sold only a small fraction (less than 1%) of its output to the Government. That is, the decision found that the crucial factor is whether the activity contributes to the performance of a Government contract, regardless of whether the contractor could have performed the contract some other way, and regardless of whether the activity contributes as well, and predominantly, to carrying out non-Government contracts.

Although the act broadly reaches all positions that contribute to or facilitate the performance of the Government contract, its coverage is not limitless. First, positions are covered only if they bear an appropriate relationship to a covered contract. The contract must be for the purchase, sale, or use of personal property or nonpersonal services, must be for an amount in excess of $2500, must be performed within the United States, and must not be otherwise exempt.

Second, the breadth of coverage depends to a large extent on how the contractor chooses to organize its workforce to perform its contract obligations. A contractor who segregates contract from noncontract work will employ fewer persons to carry out its contracts than one who does not. To continue the example given above, if a plant with several assembly lines produces automobiles, some of which are shipped to the Government and others sold commercially, a contractor may limit the application of section 503 by making the Government contract automobiles on only one of the assembly lines. In that case, employees on the other lines, which never produce automobiles for the Government, would be outside the act. If, however, the contractor does not segregate the contract from noncontract production, the employees on each of the lines will be covered.

Third, while the relationship between the work of a position and the performance of the contract need not be direct, the relationship must be real and not hypothetical. For example, a firm may do substantial business with both the Government and private customers. Individuals employed to plan and design new facilities intended for use with non-Government work would not be covered merely because of the possibility that at some point in the future the facilities will be used to carry out Government contracts. Again, a firm may be partly unionized and partly non-unionized. Assume the Government contract is performed exclusively in the non-union part of the work force. An individual assigned to represent management in dealing with the union would not be covered simply because the arrangements he or she makes with the union may subsequently influence the personnel practices followed for the nonunion employees as well.

Coverage depends on the regular or assigned duties and responsibilities of the position. A person holding a position does not go in and out of coverage as she performs first contract and then noncontract work if, throughout the period, one of the duties of the position is to perform contract-related work as the need or occasion arises. For example, the photocopy machine technician who is assigned responsibility to repair machines leased to the Government and to private firms is covered throughout the contract term, including the period before he or she first repairs the Government's machine. Discrimination against the employee is not permissible simply because the discrimination is effected on a day when the technician is servicing a private firm. Likewise, workers on an assembly line whose products are shipped at times to the Government and at times to private customers are covered, as are employees of the airline carrier whose duties include at times helping to transport Federal employees pursuant to a contract.

On the other hand, a person whose duties are permanently changed may gain or lose coverage as a result. For example, an engineer who had been working on developing weapons under a contract with the military, and who accordingly was covered, may be transferred to work on development of civilian aircraft for private customers. If the new position does not include any contract-related duties, the individual is no longer protected by the act.

It is the position's regular or assigned duties that are controlling. If a portion, however small, of a position's regular duties is necessary to or facilitates carrying out a Government contract, the position is covered. On the other hand, the isolated and unanticipated performance, outside the position's regular duties, of a contract-related task will not result in coverage. For example, suppose another employee of the photocopy machine company, whose regular duties are in no way contract-related, is unexpectedly needed to substitute for the technician who repairs the machine leased to the Government. Assuming substitution in such situations is not one of the employee's regular or foreseeable duties, his or her isolated performance of the task on a particular occasion would not result in coverage. In some cases, there will be a formal written position description that will serve as evidence of the position's actual duties and responsibilities. In other cases, there may not be a written position description, or the position description may be inaccurate or incomplete. In all cases, however, it should be possible to identify the position's actual duties, and to make a determination of coverage on that basis.

The fact that a position is deemed not to be engaged in carrying out a Government contract does not affect the individual's rights under the Americans with Disabilities Act of 1990.

## Appendix B To Part 60–741—Guidelines on the Duty To Provide Reasonable Accommodation

The following guidelines are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60–741.1(c).

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60–741.2(t), an individual with a disability is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees of whose disability the contractor has actual knowledge. As stated in § 60–741.42 (see also Appendix C below), the contractor may, for affirmative action purposes, invite all applicants and employees to indicate whether they may be disabled and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of individuals who "self-identify" in this way as to proper placement and appropriate accommodation. Moreover, § 60–741.44(d) provides that if an employee with a known disability is having difficulty performing his or her job, the contractor is required to confidentially inquire whether the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, e.g., a State vocational rehabilitation agency, or if Federal, State or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the individual with a disability should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60–741.2(v) of this part lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the individual with a disability in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate State vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–EEOC (voice), 1–800–800–3302 (TDD)), the Job Accommodations Network (JAN) operated by the President's Committee on Employment of People with Disabilities (1–800–JAN–7234), private disability organizations, and other employers.

6. With respect to accommodations that can permit an employee with a disability to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and brailled or large print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by individuals with a disability—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by nondisabled employees.

8. Another of the potential accommodations listed in § 60–741.2(v) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified individual with a disability cannot perform to another position. Accordingly, if a clerical employee is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind individual with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the individual with a disability. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit persons who cannot work a standard schedule because of the need to obtain medical treatment, or persons with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider known applicants with disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned individual with a disability at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled. It should also be noted that the contractor is not required to promote an individual with a disability as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to the vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; and (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant to demonstrate his or her skills through alternative techniques and utilization of adapted tools, aids and devices.

## Appendix C To Part 60–741—Invitation to Self-Identify

1. This employer is a Government contractor subject to section 503 of the Rehabilitation Act of 1973, as amended, which requires Government contractors, in employing persons to carry out the contract, to take affirmative action to employ and advance in employment qualified individuals with disabilities. If you have a disability and would like to be considered under the affirmative action program, please tell us. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. [The contractor should insert here a brief provision summarizing the relevant portion of its affirmative action program.] Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. Information you submit about your disability will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment; and (iii) Government officials who are engaging in law enforcement activities, including officials investigating compliance with the act shall be informed. The information provided will be used only in accordance with section 503 of the Rehabilitation Act, as amended and its implementing regulations.

2. If you are an individual with a disability, we would like to include you under the affirmative action program. It would assist us if you tell us about (1) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (2) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations.

## Appendix D To Part 60–741—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60–741.44(b):

1. The application or personnel form of each known applicant with a disability should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known individual with a disability should include (i) the identification of each promotion for which the employee with a disability was considered, and (ii) the identification of each training program for which the individual with a disability was considered.

3. In each case where an employee or applicant with a disability is rejected for employment, promotion, or training, a statement of the reason should be appended to the personnel file or application form as well as a description of the accommodations considered. This statement should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place an individual with a disability on the job, the application form or personnel record should contain a description of that accommodation.

[FR Doc. 92–25172 Filed 10–20–92; 8:45 am]

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Federal Register

Wednesday
October 21, 1992

Part III

# Department of Commerce

## Economic Development Administration

**Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act, Fiscal Year 1992; Availability of Funds; Notice**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

[Docket No. 921064-2264]

### Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act, FY 1992; Availability of Funds

**AGENCY:** Economic Development Administration, Commerce.

**ACTION:** Supplementary notice.

**SUMMARY:** The Economic Development Administration (EDA) announces the policies and the application procedures for economic adjustment assistance as authorized by Public Law 102-368, section 101, chapter II, September 23, 1992. These funds are designed to assist substantially and seriously affected States and local communities to facilitate their orderly recovery from the consequences of Hurricane Andrew, Hurricane Iniki, Typhoon Omar, the severe storms that caused damage to electrical cooperatives in the State of Kansas on June 15, 1992, and July 7 and 8, 1992, and other disasters.

**FOR FURTHER INFORMATION CONTACT:** The appropriate EDA Regional Office/ Field Office or the Director, Economic Adjustment Division, Economic Development Administration, room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-2659.

**SUPPLEMENTARY INFORMATION:**

#### Funding Availability

Funds in the amount of $70.0 million are available for this disaster recovery program and shall remain available until expended.

#### Funding Instrument

Funds will be awarded through grants under the Sudden and Severe Economic Dislocation (SSED) program under title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136; 42 U.S.C. 3121 et seq.) (PWEDA). Application procedures, competitive selection criteria and post approval project implementation information for the SSED program are applicable to the award of disaster adjustment assistance and are described in the **Federal Register** of February 4, 1992 (57 FR 4294), that announces EDA's FY 1992 Notice of Availability of Funds, or such subsequent annual Notices of the Availability of Funds. EDA will respond with direct technical support of the recovery by assisting local and state officials with the assessment of the economic injury caused by the disaster and the development of an economic recovery plan.

Implementation projects must be consistent with and preferably an outgrowth of the recovery plan.

#### Eligibile Applicants

Eligibile applicants include those states and local communities identified in the Presidential declarations of major disaster; for Florida and Louisiana resulting from Hurricane Andrew, Hawaii, resulting from Hurricane Iniki, Guam, resulting from Typhoon Omar, and other disaster areas cited as part of Public Law 102-368. Eligible applicants may include a redevelopment area or economic development district established under title IV of PWEDA; an Indian tribe, a state or a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9802; and a nonprofit organization determined by EDA to be the representative of a redevelopment area.

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

#### Special Application Procedures

As described in EDA's **Federal Register** Notice of Availability of Funds, proposals will be evaluated by EDA based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicants' ability to manage the grant effectively. In the case of a Presidentially declared natural disaster, the customary area eligibility job loss threshold criteria is waived.

#### Proposal Submission Procedures

Proposals for economic adjustment assistance authorized under section 101, of Public Law 102-368 will be submitted to EDA. Interested parties should contact the appropriate Economic Development Representative for the area or the appropriate EDA Field Office/Regional Office for a proposal package.

#### Locations of EDA Disaster Area Offices

*Hurricane Andrew*

Florida Field Office

Address: EDA Disaster Field Office, 36th Street & Lejeune Building 11, room 3139, Miami, Florida 33159-4022
Mailing Address: P.O. Box 4022, Miami Florida 33159-4022
Telephone Number: (305) 526-4725
Contact: Boyd B. Rose

Louisiana

Economic Development Representative: Pamela Davidson
Address: Room 104, 412 North Fourth Street, Baton Rouge, Louisiana 70802-5523
Telephone Number: (504) 389-0227

*Hurricane Iniki and Typhoon Omar*

Hawaii and Guam

Economic Development Representative: Frank McChesney
Address: P.O. Box 50264, Federal Building, room 4106, Honolulu, Hawaii 96850
Telephone Number: (808) 541-3391

*Storms in the State of Kansas*

Kansas

Economic Development Representative: John Zender
Address: Room 632, 1244 Speer Boulevard, Denver, Colorado 80204
Telephone: (303) 844-4902

#### Formal Application Procedures

Upon obtaining EDA Headquarters concurrence, the eligible applicant will be invited to submit a formal grant application for economic adjustment assistance. The formal application will include an ED-540, as approved by the Office of Management and Budget Control No. 0610-0058.

Dated: October 15, 1992.

**Douglas J. Aller,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 92-25513 Filed 10-20-92; 8:45 am]

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Wednesday
October 21, 1992

Part IV

# Securities and Exchange Commission

17 CFR Parts 228, 229, 240 and 249

Executive Compensation Disclosure; Final Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 228, 229, 240 and 249**

**[Release No. 33-6962; 34-31327; IC-19032]**

**RIN 3235-AF34**

## Executive Compensation Disclosure

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission has adopted amendments to the executive officer and director compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934, and to registration statements under the Securities Act of 1933. These amendments are intended to make compensation disclosure clearer and more concise, and more useful to shareholders.

**EFFECTIVE DATE:** These rules are effective October 21, 1992.

*Transition Provisions:* The new rules are effective October 21, 1992, and any registrant may use the new rules at any time thereafter.

To facilitate a smooth transition to use of the new rules, however, the following transition provisions will be allowed by the Commission. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Catherine T. Dixon at (202) 272-2589, Gregg W. Corso at (202) 272-3097, or Richard P. Konrath or Barbara C. Jacobs at (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission has adopted amendments to Items 402,[1] 403 [2] and 601 [3] of Regulation S-K, as well as Items 8 and 10 of Schedule 14A,[4] Items 11 and 14 of Form 10-K,[5] and corresponding changes to Items 402,[6] 403 [7] and 601 [8] of Regulation S-B, and Item 13 of Form 10-KSB.[9] These amendments modify the disclosure of executive officer and director compensation in proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),[10] and registration statements under the Securities Act of 1933 ("Securities Act").[11]

**Table of Contents**



### I. Executive Summary

To improve shareholders' understanding of all forms of compensation paid to senior executives and directors, the criteria used by the board of directors in reaching compensation decisions, and the degree of relationship between compensation and corporate performance, the Commission earlier this year published for comment substantial revisions to its rules governing disclosure of executive compensation in proxy and information statements and other Commission filings.[12] Designed to furnish shareholders with a more understandable presentation of the nature and extent of executive compensation, the proposals sought to consolidate the requisite disclosure in a series of tables setting forth each compensatory element for a particular fiscal year. The proposed new disclosure system relied on several specific new elements, as well as reformatting of existing required disclosures for greater clarity.

First, all compensation paid to specified senior executives over the past three years was to be set forth in a new

[1] 17 CFR 229.402.
[2] 17 CFR 229.403.
[3] 17 CFR 229.601.
[4] 17 CFR 240.14a-101, Items 8 and 10.
[5] 17 CFR 249.310, Items 11 and 14.
[6] 17 CFR 228.402.
[7] 17 CFR 228.403.
[8] 17 CFR 228.601.
[9] 17 CFR 249.310B, Item 13.
[10] 15 U.S.C. 78a *et seq.*
[11] 15 U.S.C. 77a *et seq.*

[12] Securities Act Release No. 6940 (June 23, 1992) [57 FR 29582], as modified, Securities Act Release No. 6941 (July 10, 1992) [57 FR 31156]. The comment letters may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, File No. S7-16-92.

"Summary Compensation Table." This table would show both annual and long-term compensation in a single, comprehensive overview. Second, the Compensation Committee of the board of directors would be required to report on the corporate performance factors that it relied on in making specific compensation awards for reporting executives, as well as describe the general policies of the committee in determining senior executive compensation. Third, the cumulative total return to shareholders of the registrant over a period of at least the previous five years would be required to be set forth in a line graph, together with the comparable return to shareholders for the stocks included in (i) the Standard and Poor's 500 Composite Stock Price Index ("S&P 500"); and (ii) any recognized industry index (*e.g.*, the Dow Jones Transportation Average) or a group of peer companies selected by the registrant.

Public response to the Commission's requests for comment on the proposed revisions was substantial. The Commission has received more than 900 letters of comment addressing the proposals. Commenters include approximately 555 individual and institutional shareholders, 245 registrants and registrant organizations, and a combined total of over 100 members of the executive compensation consultant, accounting, legal and academic communities. The comment letters reflect a general consensus that reform of the current executive pay disclosure system is appropriate and necessary.

Many of the commenters offered recommendations or suggestions for refinement of the original proposals to accomplish more effectively the goal of assuring that all material facts regarding executive compensation are clearly and fully disclosed. Other commenters suggested methods for reducing the cost or burden of collecting the necessary information, as well as for limiting the applicability of the new requirements to certain types of registrants. Still other commenters expressed strong concerns with respect to potential litigation arising from the new disclosure elements. A number of changes have been made in response to these comments.

As under the proposals, the Summary Compensation Table will cover senior executive compensation in each of the registrant's last three fiscal years, followed by tables containing more specific data on the components of compensation for the last completed fiscal year. However, in response to public comment, the disclosure as to "all executive officers as a group" has been deleted. The former requirement to provide individualized disclosure as to the five highest paid executive officers has been modified. Under the new Summary Compensation Table (and all other tables), the covered individuals will be the Chief Executive Officer ("CEO") (regardless of pay level), and the four most highly compensated executive officers in addition to the CEO. Except for the CEO, disclosure is limited to those executives with salary and bonus of over $100,000 (an increase from the former $60,000 threshold) for the last completed fiscal year.

The Board Compensation Committee Report has been retained, but revised to limit the description of performance factors on which the Committee specifically relied to the compensation of the CEO alone, together with a discussion of the Committee's general policies with respect to executive officer compensation. This will avoid possibly repetitive descriptions as to each of the named executive officers. In addition, language in the proposal that was read by some as suggesting the need to disclose discussions of subjective personal factors relating to an executive's performance (*e.g.*, traits of judgment, personality, etc.) has been revised to make it clear that the mandated disclosure is solely with respect to corporate performance criteria (*e.g.*, profitability, sales growth, return on equity, market share) on which the Committee relied in reaching its decision concerning CEO compensation. Finally, this report will be given the same legal status as the annual report to security holders required pursuant to the proxy rules and, as such, will not be deemed to constitute soliciting material or to be filed for purposes of section 18 of the Exchange Act.[13] In the Commission's view, the "remedy" for any shareholder who is not satisfied with the Committee's report should be to vote against re-election of committee members as directors, not to litigate claims in the courts.

In addition to the Summary Compensation Table, the rules as proposed included several tables providing more detailed information concerning grants, exercises and value of outstanding stock options, long-term incentive plans and other information. As adopted, the rules eliminate certain of the proposed detailed tables or portions thereof, and combine others into single tables. These revisions are designed to eliminate redundant information and to improve the clarity of information presented. Hypothetical rates of stock price appreciation to be used in presenting potential realizable values of stock options and SARs have been reduced. As an alternative to use of hypothetical values, presentation of grant-date option (or SAR) values calculated through use of a recognized valuation formula, such as the "Black-Scholes" option pricing model, will be permitted. Registrants also are permitted to add additional hypothetical situations, such as a zero return to shareholders, as well as other information not required by the rules.

The Performance Graph has been revised slightly. Instead of mandating comparison of the registrant's cumulative total shareholder return in all cases to the return on the S&P 500, the rule will allow issuers whose stock is not included in the S&P 500 to select any broad market index that does include their stock or the stock of companies that trade in the same national securities exchange or The National Association of Securities Dealers Automated Quotations System ("NASDAQ") market, or are of comparable market capitalization. A comparison of the registrant's return also must be made to the return on either a published industry index or a registrant-determined peer index. In addition, in view of the purpose of this graph as a general depiction of one measure of corporate performance to be used by shareholders in evaluating the quality of decisions made by directors standing for re-election, the Performance Graph will be given the same legal status as described above for the Board Compensation Committee Report. This also is intended to insure that issuers will not be subjected to litigation concerning their selection of a peer company or industry index for inclusion in the Performance Graph, since no single other company or industry index will be perfectly comparable to a given issuer.

The final rules also provide that the Board Compensation Committee Report and the Performance Graph are required to be included only in proxy and information statements relating to the annual election of directors; they need not be included in or incorporated by reference into any of the registrant's filings under the Exchange Act or Securities Act. Like those items, the Report on Option/SAR Repricing also is required only in annual election proxy and information statements. The proposed disclosure of additional information regarding the relationships between compensation committee

[13] 15 U.S.C. 78r.

members and the registrant or other entities ("Compensation Committee Interlocks and Insider Participation") has been substantially revised, as discussed below.

Small business issuers eligible to report and register securities under the recently adopted small business disclosure system [14] will not be required to include many of the required new disclosures, including the Board Compensation Committee Report and the Performance Graph. In addition, small business issuers will be exempt from portions of other disclosure requirements and will have the option under the Transition Provisions of using the version of the rules in effect prior to the effective date for all filings before May 1, 1993.

Investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") [15] will be subject only to the provisions of revised Item 402(g) with respect to disclosure of compensation of directors and the compensation disclosure requirements included in the forms on which they register as investment companies. In addition, the rules adopted today do not affect compensation disclosure by foreign issuers.

## II. Revised Item 402 of Regulation S–K

### *A. General*

#### 1. Treatment of Specific Types of Issuers

a. *Small Business Issuers.* Both in its proposals to revise executive compensation disclosure requirements and its recent adoption of the new integrated small business disclosure system,[16] the Commission sought comment on the extent to which small businesses should be subject to the new provisions governing disclosure of executive compensation, particularly the requirements to provide the Board Compensation Committee Report, the Performance Graph, and the Compensation Committee Interlocks and Insider Participation disclosure. Representatives of small and high technology ("hi-tech") companies argued that exceptions should be made for such companies, based on the relative costs of compliance, the typical structures of their boards, and the significantly different compensation practices among start-up, developing and hi-tech companies. While a few commenters took issue with such an exclusion, arguing that shareholders' need for the full panoply of executive pay disclosure was no less in the case of smaller companies, there was significant commenter support, from shareholders and others, for special provisions tailored to smaller issuers.

Under the rules adopted today, small business issuers eligible to use the small business integrated disclosure system [17] will be required to provide only the Summary Compensation Table, the option and SAR grant and exercise tables (omitting the option valuation information), the long-term incentive plan awards table, and disclosure concerning option or SAR repricing (omitting the 10-year repricing history), named executive officer employment contracts and termination/severance arrangements, and director compensation.[18] Any small business issuer that elects not to use the small business forms and schedules nonetheless may provide this more streamlined compensation disclosure.[19] In addition, as a transition matter, small business issuers are eligible to file under the rules in effect prior to the effective date until May 1, 1993.

b. *Registered Investment Companies.* Investment companies registered under the Investment Company Act have been excluded from the executive compensation and registrant performance disclosure requirements of revised Item 402, because the management functions of most such companies are performed by external managers. Instead, registered investment companies will comply with disclosure requirements prescribed by applicable Investment Company Act registration statements. Compensation of investment company directors, however, will continue to be disclosed in accordance with revised Item 402(g).[20]

c. *Foreign Private Issuers.* No change has been made to the existing disclosure obligations with respect to executive and director compensation of foreign private issuers using Form 20–F.[21] Language has been added to Item 402 clarifying that a foreign private issuer may satisfy the requirements by reporting the information required by Items 11 and 12 of Form 20–F, even if filing reports on forms for domestic issuers.[22]

#### 2. Transition Provisions

The new rules are effective immediately upon publication in the **Federal Register**. Any registrant may use the new rules at any time thereafter. To facilitate a smooth transition to use of the new rules, however, the following transition provisions will be allowed by the Commission. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

There are specific transition provisions with respect to certain items in the Summary Compensation Table, Board Compensation Committee Report, Compensation Committee Interlocks and Insider Participation disclosure, and Report on Option/SAR Repricing, as discussed below.

#### 3. Application to Specific Types of Filings

Item 402 has been restructured to specify those disclosure provisions that are required in all filings calling for Item 402 compensation information, and those provisions applicable only to a proxy or information statement relating to an annual meeting of security holders (or special meeting or written consents in lieu of such meeting) at which directors are to be elected. The provisions applicable only to such proxy or information statements are the Board Compensation Committee Report, the Performance Graph, and the Report on Option/SAR Repricing. These items will not be required to be included directly in any other filing, or incorporated by reference into any Securities Act or Exchange Act filing.[23]

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[14] Regulation S–B [17 CFR 228.10 *et seq.*]; *see* Securities Act Rule 405 and Exchange Act Rule 12b–2 [17 CFR 230.405; 17 CFR 240.12b–2].#

[15] 15 U.S.C. 80a–1 *et seq.*

[16] Securities Act Release No. 6949 (July 30, 1992) [57 FR 36442].

[17] See Item 10(a)(1) of Regulation S–B [17 CFR 228.10(a)(1)].

[18] Item 402 of Regulation S–B has been revised accordingly.

[19] Item 402(a)(1)(i) of Regulation S–K.

[20] Item 8 of Schedule 14A [17 CFR 240.14a–101, Item 8], as amended.

[21] 17 CFR 249.220f.

[22] Item 402(a)(1)(ii) of Regulation S–K.

[23] Item 402(a)(8) of Regulation S–K.

4. General Provisions of Revised Item 402

Several new general provisions have been added to amended Item 402 in light of the comments received. First, the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries.[24] Just as under former Item 402(a)(1), the source of the compensation has no bearing on the application of new Item 402.[25] As under the former requirements, however, the Item states that registrants need not provide disclosure of any transaction between the registrant and a third party that is reported in response to the relationships disclosure requirements of Item 404 of Regulation S–K.[26] Further, registrants are expressly permitted to exclude any table, or any column otherwise prescribed by a given table, absent a compensatory item required to be reported in such table or column in any of the covered fiscal years.[27]

In response to comment, and to streamline further the requisite disclosure, the proposed categorization of compensatory instruments has been revised. Options and freestanding SARs, whether exercisable in cash or stock, will receive the same treatment under the revised Item.[28] Awards under restricted stock plans that are subject to performance-based conditions to vesting, in addition to the lapse of time and/or continued employment, will be permitted to be reported as long-term incentive plan items.

[24] Item 402(a)(2) of Regulation S–K. Except as specified in Item 402(a)(5) with respect to third-party transactions disclosed under Item 404 of Regulation S–K [17 CFR 229.404], all plan and non-plan compensation must be reported pursuant to Item 402, even if also called for by another disclosure requirement. No item need be reported for a fiscal year if already reported for a prior fiscal year. *Id.* The Item specifies that, for purposes of Item 402, the term "plan" does not include non-discriminatory medical, group life insurance or relocation plans available generally to all salaried employees. Item 402(a)(7)(ii) of Regulation S–K (combining the definition of "plan" in Instruction 3 to former Item 402(b) with the exclusion for specified non-discriminatory plans in former Item 402(b)(1)).

[25] See former Item 402(a)(1) of Regulation S–K; Securities Act Release No. 6003 (Dec. 4, 1978) [43 FR 58151]. Revised Item 402(a)(2) of Regulation S–K is a combination of the provisions governing disclosure in the cash compensation table (former Item 402(a)(1) of Regulation S–K) and the instruction mandating inclusion in Item 402 of transactions of the registrant with third parties where the primary purpose is to furnish compensation to any covered executive officer (General Instruction 2 to former Item 402 of Regulation S–K).

[26] Item 402(a)(5) of Regulation S–K.

[27] Item 402(a)(6) of Regulation S–K.

[28] Items 402(a)(7)(i), 402(b)(2)(iv)(B), 402(c) and 402(d) of Regulation S–K.

5. Designation of Named Executive Officers and Elimination of Executive Officer Group

There was wide support from all categories of commenters to require individualized disclosure of CEO compensation, regardless of pay level, and to raise the threshold for individualized disclosure regarding other executives from $60,000 to $100,000. Similarly broad commenter support was expressed for elimination of the executive officer group information. Several commenters suggested that the number of executive officers subject to individual disclosure could be reduced without loss of material information to shareholders, and with the concomitant benefit of streamlining the information required. At the same time, others suggested that the Commission expand disclosure beyond the five named executives originally proposed to elicit individualized information as to all executive officers serving on the registrant's board, or even as to all directors, whether or not employed by the registrant in any other capacity. Some commenters objected to basing the selection of the highest paid executives on the sum of amounts contained in all three of the annual compensation columns in the Summary Compensation Table, because of the potentially wide variety of non-comparable compensation that could be reported in the third, or "Other Annual Compensation," column.

The requirement to disclose information for the executive group has been eliminated, and the provisions governing designation of the persons subject to individualized disclosure as "named executive officers" revised in light of these comments.[29] As was proposed, the named executive officers will consist of the CEO plus the other four most highly compensated executive officers. Status and compensation levels in the last completed fiscal year will determine the identity of the named executive officers for all Item 402 disclosure, both tabular and narrative. In determining the officers covered, status at the end of the last completed fiscal year governs. Individualized disclosure of the CEO's compensation will be required under amended Item 402, regardless of pay level. On the other hand, individualized disclosure with respect to the other four most highly compensated executives will not be required with respect to anyone with compensation of $100,000 or less in the last completed fiscal year. In a change from the proposal, determination of the most highly compensated executives will be based on the total of the amounts required to be shown in the Salary and Bonus columns of the Summary Compensation Table for the last completed fiscal year.

Instruction 2(C) of former Item 402(a) of Regulation S–K regarding bonus and overseas assignments has been retained in the new item.[30] The item as adopted also includes an instruction to remind registrants that any officer of a subsidiary with policymaking functions may be an executive officer of the registrant who may be subject to individualized pay disclosure.[31]

*B. Summary Compensation Table*

The Summary Compensation Table [32] was praised by shareholder commenters as the linchpin of the Commission's revised executive compensation disclosure scheme. This tabular, three-year summary will provide shareholders with a comprehensive overview of the registrant's executive pay practices. Through this more objective, formatted presentation of compensation information, which in the past often has been furnished in widely dispersed and disjointed narrative, shareholders will be able to understand clearly compensation for the last completed fiscal year, to identify trends in the registrant's compensation of its top managers, and to compare such trends with those disclosed by other registrants.

As widely recognized and endorsed by shareholder commenters, the Summary Compensation Table is intended to provide an easily understood overview of executive compensation in a single location within the proxy or information statement. Suggestions from a number of commenters to split the Summary

[29] Item 402(a)(3) of Regulation S–K, and Instruction 1 thereto.

[30] Instruction 3 to Item 402(a)(3) of Regulation S–K. The language of the instruction has been clarified to reflect expressly that the circumstances in which it applies are limited. This instruction is intended to prevent the literal language of the item from leading to designation of an individual as one of the registrant's most highly compensated executive officers in lieu of another individual, based on a highly unusual situation, such as a one-time extraordinary bonus, or on compensation that has been adjusted to reflect the added costs imposed by overseas assignments. The instruction does not apply where the registrant anticipates that the circumstances will recur or the high compensation of an executive stationed abroad is not attributable to such costs.

[31] Instruction 2 to Item 402(a)(3) of Regulation S–K, taken from Instruction 2(B) to former Item 402(a) of Regulation S–K. See Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

[32] Item 402(b) of Regulation S–K.

Compensation Table into multiple tables would have defeated this purpose, and therefore have not been adopted. Similarly, any presentation of the Summary Table that would obscure viewing it as a unitary item of disclosure is not permitted. At the suggestion of some commenters, and as illustrated below, however, registrants will be permitted to include vertical lines of demarcation to distinguish among the columns in the Summary Compensation Table.

Additionally, the table has been streamlined and a number of compensation items redefined in response to comment.

Some commenters suggested that the Commission provide a three-year transition for the Summary Compensation Table because of the difficulty of compiling the data in the form required, particularly with respect to the executive group. In light of the elimination of the executive group information, the Commission does not believe that a three-year phase-in is generally necessary. However, to facilitate adaptation to the revised requirements, registrants will be permitted a transition period for disclosure of the amounts reported in the "Other Annual Compensation" and "All Other Compensation" columns of the new table. Accordingly, these columns need not include information for fiscal years ended before December 15, 1992. Small business issuers, however, will be permitted to use a three-year phase-in for all columns of the Summary Compensation Table.

Commenters also raised questions about the Item's application to periods when the registrant was not a reporting company. The Item provides that, if the registrant was not a reporting company during the entire three-year period, no information need be provided for any year, other than the most recent completed fiscal year, during which the registrant was not an Exchange Act reporting company.[33]

The rules as adopted include the proposed provision that compensation reported in the Summary Compensation Table for a named executive officer includes that person's compensation for the full covered fiscal year, including compensation attributable to the portion of the year in which the executive did not serve in that capacity.[34] Commenters questioned the effect of a change in the CEO or other named executive officers during the three years covered by the Summary Compensation Table. Information is required to be provided for any covered year during which the incumbent served (for any portion of the year) as CEO, but not for prior fiscal years. For the year in which the CEO assumed his or her position, disclosure must be provided of all compensation for the full year for services rendered to the registrant and its subsidiaries, including compensation prior to becoming CEO. With respect to any of the other named executives, disclosure of historic pay is required if such executive was an executive officer of the registrant during the years covered, notwithstanding a change in position. Consistent with treatment of the CEO, if a named executive became an executive officer during one of the reporting years, all compensation during that year should be included.

The Summary Compensation Table is set forth below, followed by an explanation of the nature and scope of compensation elements included.

SUMMARY COMPENSATION TABLE

| Name and principal position | Year | Annual compensation | | | Long term compensation | | | All other compensation ($) |
|---|---|---|---|---|---|---|---|---|
| | | | | | Awards | | Payouts—LTIP payouts ($) | |
| | | Salary ($) | Bonus ($) | Other annual compensation ($) | Restricted stock award(s) ($) | Options/SARs (#) | | |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) |
| CEO | 1992 | | | | | | | |
| | 1991 | | | | | | | |
| | 1990 | | | | | | | |
| A | 1992 | | | | | | | |
| | 1991 | | | | | | | |
| | 1990 | | | | | | | |
| B | 1992 | | | | | | | |
| | 1991 | | | | | | | |
| | 1990 | | | | | | | |
| C | 1992 | | | | | | | |
| | 1991 | | | | | | | |
| | 1990 | | | | | | | |
| D | 1992 | | | | | | | |
| | 1991 | | | | | | | |
| | 1990 | | | | | | | |

1. Annual Compensation—Salary and Bonus Columns

No substantive change has been made to the proposal with respect to the reporting of salary and bonus, with one minor exception discussed below. Under the amended regulation, the dollar value of base salary and annual bonus, whether denominated in cash, stock or other rights, will be broken out in separate columns of the Summary Compensation Table. Commenters for the most part recognized the legitimate interest of shareholders and other users of proxy and information statements in the distribution of annual compensation dollars between fixed salary and the generally more performance-sensitive bonus. While several commenters observed that some bonuses are not tied to performance, but instead represent

[33] Instruction to Item 402(b) of Regulation S-K. See sections 13(a) and 15(d) of the Exchange Act [15 U.S.C. 78m(a) and 78o(d)]. If the registrant was a reporting company during part of a fiscal year, information for the entire fiscal year must be provided, since that information already would have been reported at the time the registrant registered the securities under the Securities Act or Exchange Act. If information for any prior year was provided in connection with a previous Commission filing, information for that year should be provided in the Summary Compensation Table.

[34] Item 402(a)(4) of Regulation S-K.

merely a percentage of salary, this type of information would be disclosable in the Board Compensation Committee Report.

Compensation earned for services performed in a given year, but deferred at the election of the executive officer, will be reported as annual compensation in the column for the type of compensation to which it corresponds (salary or bonus). Registrants may not avoid inclusion of annual cash or non-cash payments in the salary or bonus columns simply by labeling such payments as something other than salary or bonus. Where the amount of bonus or salary earned for services performed in the last completed fiscal year is not calculable in sufficient time to be reported in the proxy or information statement, the instructions specify that the Summary Compensation Table in such proxy or information statement must so note. The Summary Compensation Table in the next year's proxy (or information) statement must include that bonus or salary amount for the fiscal year in which it was earned.[35]

The Commission has decided to modify the previously proposed treatment of forgone salary or bonus pursuant to registrant programs under which executives receive stock, stock-based instruments or some other form of compensation in lieu of a portion of annual compensation earned.[36] Registrants will not be required to report or disclose the amount of salary or bonus forgone in the appropriate column, but must include the dollar value of such forgone amounts in calculating whether a particular executive is among the most highly compensated and whether a particular executive's annual salary and bonus in the aggregate exceed the new $100,000 threshold for individualized disclosure.[37] Awards of non-cash compensation made to an executive in lieu of salary or bonus amounts nevertheless must be disclosed where these awards otherwise are required to be reported in the Summary Compensation Table. For example, options or restricted shares received in a given fiscal year instead of annual cash compensation otherwise payable in that year would be disclosed in the Summary Compensation Table in the corresponding option or restricted stock grant column. Restricted stock received in lieu of salary or bonus will be included in the aggregate year-end information on restricted stock holdings required to be reported for each named executive officer. Where the grant of a particular form of non-cash compensation does not appear in the Summary Compensation Table, as would be the case with respect to a grant of performance shares or units received in exchange for forgone salary or bonus, a footnote must be added to the salary or bonus column so disclosing and identifying the table where such grant is included.[38]

2. Other Annual Compensation

All additional forms of annual cash and non-cash compensation paid, awarded or earned, including registrant contributions to retirement plans, were proposed to be reported as "Other Annual Compensation." Both the nature and scope of the information proposed to be reported under this column have been revised substantially in response to comment.

As restructured, the Other Annual Compensation column is required to cover specified other compensation not properly categorized as salary or bonus.[39] The items specified are: perquisites; payments to cover an executive's taxes (commonly known as "gross-ups"); earnings paid or payable, but deferred at the election of the named executive officer, on deferred compensation, restricted stock and stock options/SARs at above-market interest rates or through preferential dividend payments; all earnings paid or payable, but deferred at the election of the named executive officer, on long-term incentive plan ("LTIP") compensation; [40] and preferential discounts on stock purchases.

As proposed, the Other Annual Compensation column would have been footnoted to identify its different components. That general provision has been revised to require only disclosure of certain perquisites.

a. *Perquisites.* Several commenters suggested that, to reflect inflation, the perquisites and other personal benefits reporting threshold should be raised from the lesser of $25,000 or 10% of reported salary and bonus, and that the requirement to itemize each perquisite or benefit in a footnote be eliminated. Given the effect of inflation since the last revision of Item 402 in 1983, which has been taken into account in the Commission's upward adjustment of the dollar benchmark for designating the named executives, the Commission similarly has increased the perks/personal benefits threshold in the final rule to call for disclosure only when the aggregate value of these items exceeds the lesser of either $50,000 or 10% of total salary and bonus disclosed in the Summary Compensation Table.[41]

As proposed, the registrant would have been required to identify each perquisite included in the amount reported in a footnote to the Other Annual Compensation column. The Item has been revised to require footnote or textual narrative disclosure of the nature and value of any particular perquisite or benefit only for those perks valued at more than 25% of the sum of all perquisites reported as Other Annual Compensation for that executive.[42]

b. *Earnings on deferred compensation, restricted stock, options and SARs.* Commenters took issue with the proposed change to require reporting of all interest on deferred compensation, and all dividends on restricted stock. These commenters objected to characterizing all interest and dividends as compensation, whatever the rates of return. The Commission is persuaded of the merit of the commenters' view that market-rate and non-preferential earnings on deferred compensation, restricted stock, and options/SARs should not be reported as compensation. Accordingly, the Item has been revised to require disclosure only of above-market or preferential earnings paid or payable by the registrant or any of its

[35] Instruction 1 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K.

[36] Some commenters expressed concern that shareholders would assign the dollar value of the amount forgone to the option or other instrument elected.

[37] Instruction 3 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K; Instruction 1 to Item 402(a)(3) of Regulation S-K. For purposes of determining whether perquisites need be reported, forgone salary or bonus need not be considered.

[38] Instruction 3 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K.

[39] Item 402(b)(2)(iii)(C) of Regulation S-K.

[40] Earnings on deferred compensation, restricted stock, options/SARs, or long-term incentive compensation accrued but not currently payable (i.e., the named executive officer cannot elect to receive it currently) would be reported in the "All Other Compensation" column of the Summary Compensation Table, as would registrant contributions to defined contribution plans.

Items such as annual expense accruals for contingent awards under long-term incentive plans, yearly appreciation or depreciation in the value of phantom stock or SARs between award and maturation, and annual conditional vesting of deferred shares under a performance share plan, were not intended to be covered by the Summary Compensation Table and need not be reported in this table or pursuant to any other provision of Item 402.

[41] The requirement in former Item 402 to disclose the existence of perquisites below the threshold has been deleted as immaterial.

[42] Instruction 1 to Item 402(b)(2)(iii)(C) of Regulation S-K. As under former Item 402, dollar amounts assigned to perquisites and other personal benefits will continue to be calculated on the basis of aggregate incremental cost to the registrant and its subsidiaries. Instruction 2 to Item 402(b)(2)(iii)(C) of Regulation S-K.

subsidiaries.[43] Such amounts will be reported as Other Annual Compensation if paid (or payable but deferred at the named executive's election) with respect to the fiscal year and calculable in sufficient time to be reported in the proxy or information statement. If not so paid or payable in the fiscal year, such amounts will be reported under the residual All Other Compensation column.

To avoid the problems cited by various commenters in allowing registrants to exercise judgment as to what constitutes market rate interest, the item now defines the term "market rate." [44] Interest will be deemed to be above-market, thereby triggering a disclosure obligation, only if the rate of interest is in excess of 120% of the applicable federal long-term rate ("AFR").[45] In contrast to former Item 402, this determination will be made by reference to the market rate in effect only at the time the interest rate was set.[46] Under the former item, the measurement was taken both at the time the plan was established and at the time the interest was earned. The change is designed to pick up interest rates intended by the registrant to be compensatory. Only the above-market portion of interest earned in the fiscal year is required to be reported as compensation; that compensation should be reported in the Other Annual Compensation column if paid or payable in that year; otherwise, it should be reported in the All Other Compensation column of the Summary Compensation Table.

The value of dividends (or dividend equivalents) will be reported in the Summary Compensation Table only where the named executive receives preferential dividends.[47] Dividends (or dividend equivalents) are preferential only if they are earned at a more favorable rate than dividends on the registrant's common stock. Where dividends (or dividend equivalents) earned are preferential, only the dollar value of the preferential portion thereof is required to be reported as compensation; that compensation should be reported in the Other Annual Compensation column if paid or payable in that year, and otherwise in the All Other Compensation column.

c. *Earnings on LTIP compensation.* In contrast to earnings on deferred compensation, restricted stock and options/SARs, the full amount of all earnings on LTIP compensation must be reported as compensation because such earnings do not represent payments for the registrant's use of the executive's deferred funds. Earnings on LTIP compensation may be reported as part of the amount ultimately realized, unless such amount is paid or payable (but deferred at the election of the named executive officer) prior to payout or maturation. If paid or payable at such earlier time, these earnings would be reported as Other Annual Compensation for the year paid or payable.

d. *Discounted stock purchases.* This column includes discounts on stock of the registrant and its subsidiaries purchased by named executive officers from the registrant or its subsidiaries, unless such discounts are available generally, either to all shareholders or to all salaried employees.[48] Such discriminatory discounts provide compensation to the executive equal in value to the difference between the purchase price paid by the executive and the fair market value of the stock at the date of purchase.[49]

3. Restricted Stock Awards

No change has been made in the final version of Item 402 with respect to the Summary Compensation Table column for reporting the full market value of aggregate restricted shares awarded in a given fiscal year to a named executive. Given the minimal risk of forfeiture and the concomitant likelihood of appreciation above the grant-date market value attendant to the vast majority of restricted share awards, which are contingent only upon the passage of time and/or continued employment with the registrant, no discount to market is appropriate to reflect interim constraints on transferability. Deductions for any consideration the executive-recipient has paid for the restricted stock granted, however, may be reflected in the aggregate amount disclosed.[50]

Where a restricted stock plan includes performance-based conditions on vesting, the registrant may elect to treat these items as LTIP compensation.[51] Grants of such items would be reported in the table specifically provided for LTIP awards. If so reported at grant, the value of any of these so-called "performance restricted shares" must be reported in the Summary Compensation Table on payout or maturation.

Under the proposal, registrants would have been required to include in a footnote the vesting schedule for all restricted stock awarded. As adopted, the Item requires footnote disclosure of vesting terms only for those awards that provide for vesting of all or part of the shares awarded in less than three years from the date of grant.[52] Restrictions on full ownership of restricted shares typically lapse over a period of at least three to five years.[53] Therefore, footnote vesting information is required for awards that do not reflect those typical conditions.

Data on the number and value of aggregate restricted shareholdings at the end of the last completed fiscal year have been moved from the proposed Restricted Stock Grant Table to a footnote to the Restricted Stock Award column of the Summary Compensation Table. Except for this information, the Restricted Stock Grant Table was largely redundant of information

[43] Earnings on deferred compensation invested in third-party investment vehicles, such as mutual funds, need not be reported.

[44] Instruction 3 to Item 402(b)(2)(iii)(C) of Regulation S-K.

[45] A registrant should select the compounding rate in the AFR table that corresponds most closely to the rate set. AFR data are published monthly by the Internal Revenue Service, which requires use of the AFR for a variety of purposes, including determination whether the present value of a future change-in-control payment renders it a "golden parachute" for tax purposes. See Internal Revenue Code Section 1274(d) [26 U.S.C. 1274(d)]; Internal Revenue Code Section 280G(d)(4) [26 U.S.C. 280G(d)(4)].

[46] In the event of a discretionary reset of the applicable interest rate, the requisite calculation must be made on the basis of the new rate in effect at the time of such reset. Instruction 3 to Item 402(b)(2)(iii)(C) of Regulation S-K.

If applicable interest rates vary depending on conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. *Id.*

[47] Instruction 4 to Item 402(b)(2)(iii)(C) of Regulation S-K. Where there is no preferential treatment, the Summary Compensation Table simply will include a footnote to the Restricted Stock Award column stating whether dividends are payable on the restricted stock. The same preferential standard governs reporting of accrued dividends and equivalents in the "All Other Compensation" column.

[48] Item 402(b)(2)(iii)(C)(5) of Regulation S-K. Purchases made through deferral of salary or bonus will receive the same treatment.

[49] The discount is generally treated as a compensation expense under Generally Accepted Accounting Principles. See Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (October 1972) ("APB No. 25").

[50] Item 402(b)(2)(iv)(A) of Regulation S-K. This treatment is consistent with the recognition, for accounting purposes, of full market value at measurement date (grant date if no contingencies) less any amounts paid or to be paid by the executive. See APB No. 25.

[51] Instruction 1 to Item 402(b)(2)(iv) of Regulation S-K. Disclosure of restricted stock awards in the Summary Compensation Table may not be evaded simply by attaching illusory performance conditions to time-lapse restricted shares.

[52] Instruction 2 to Item 402(b)(2)(iv) of Regulation S-K.

[53] See F. Foulkes, Executive Compensation—A Strategic Guide for the 1990s 531 (1991); see also Equity Compensation Trends in America 13 (Share Data 1991) (48% of survey respondents award restricted stock that vests in five or more years).

disclosable elsewhere under amended Item 402 and therefore has been deleted.

4. Option/SAR Grants

Separate option and freestanding SAR columns originally proposed have been combined, at the suggestion of commenters, to streamline presentation of the requisite award information.[54] As noted above, the total number of options and SARs reported must include cash-only SARs as well as those payable in stock. Rather than adding a separate column for repriced options or SARs to the Summary Compensation Table, as proposed, registrants are required to include options repriced during a covered fiscal year as new grants of options in this column.[55]

5. LTIP Payouts

No change has been made to the reporting of LTIP payouts or maturation,[56] other than to require the inclusion of the value of any restricted performance shares that vest during a covered fiscal year if not previously reported in the Summary Compensation Table as an award of restricted stock.[57] Registrants therefore must disclose the dollar value of cash or stock-denominated awards actually realized, or matured but deferred at the election of a named executive officer, in a particular fiscal year.

Under the original proposal, registrants would have been required to disclose all performance-related conditions to payout in a footnote to this column. As adopted, footnote disclosure is required only of the waiver of performance targets or other conditions to realization of an award in connection with a reportable payout.[58]

6. All Other Compensation

Any compensation to a named executive officer that is not reported under any other column of the Summary Compensation Table must be reported under the All Other Compensation column,[59] other than option and SAR exercises and LTIP awards.[60] In contrast to the proposal, the footnote identifying and quantifying compensation reported in this column may be restricted to the last completed fiscal year. Item 402(b) includes a list of specific items that would be reportable in this column. These items, which are not exclusive, are discussed below.

a. *Amounts paid, payable or accrued under termination, severance and change-of-control arrangements.* As proposed, the full value of any golden parachute or other amount paid, payable or accrued [61] in a fiscal year covered by the Summary Compensation Table, in connection with a change-in-control or a named executive's termination or severance, would be reported in this column.[62]

b. *Earnings on deferred compensation, restricted stock, options and SARs.* As discussed above, earnings on deferred compensation, restricted stock, options and SARs are treated as compensation only when they are above-market, in the case of interest, or preferential, in the case of dividends or dividend equivalents.[63] Where such earnings with respect to a covered fiscal year are not reported as Other Annual Compensation, they should be reported in the All Other Compensation column. Thus, the proposed column for accrued dividends on restricted stock has been eliminated.

c. *Earnings on LTIP Compensation.* As noted above, the full amount of earnings on LTIP compensation is treated as compensation. These amounts should be reported in the All Other Compensation column, unless reported in the Other Annual Compensation column.[64] If the applicable interest rate varies depending on specified conditions (for example, a minimum period of continued service), the reported amount should be calculated assuming all conditions to receiving interest at the highest rate are met.

d. *Registrant contributions to defined contribution plans.* Disclosure is required of the annual contributions or other allocations of the registrant or any of its subsidiaries on behalf of any named executive officer to defined contribution plans ("DCPs"), whether tax-qualified plans, excess benefit plans, or non-qualified supplemental executive retirement plans, known as "SERPs." In light of commenter concerns that such contributions might be misperceived as currently available to the employee during the reporting period, the location for reporting of these amounts has been changed from the Other Annual Compensation column to the All Other Compensation column.[65]

Responding to questions raised in the proposing release, several commenters advised that the revised Item should require disclosure of the entire amount of a registrant's annual DCP contribution for the year in which made, regardless of whether benefits are vested or unvested at that point. These commenters stated that the timing of vesting should not be controlling because for many of these plans, particularly discriminatory plans, substantial unvested amounts might never be disclosed. This could occur, for example, where contributions are made annually on behalf of an executive to a DCP SERP with a retention, or "golden handcuff," feature under which vesting will not occur until at or after retirement. The Commission agrees with these comments and has amended the rules to cover such contributions.[66]

The requirements of Item 402 have been revised to clarify that defined benefit or actuarial plans are not covered in the Summary Compensation Table.[67] Information concerning defined benefit or actuarial plans therefore will continue to be reported pursuant to the provisions of Item 402(f) governing pension plan disclosure.

e. *Compensatory split-dollar insurance payments.* Under the proposal, the annual premiums paid by the registrant in the covered fiscal year with respect to split-dollar insurance arrangements relating to the named executive officers would have been required to be reported in the Other Annual Compensation column of the Summary Compensation Table. Commenters objected to this treatment, urging that it overstated the compensatory aspect of these arrangements, because the registrant-paid premiums normally are refunded to the registrant on termination of the policy.

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[54] Item 402(b)(2)(iv)(B) of Regulation S-K.

[55] Instruction 3 to Item 402(b)(2)(iv) of Regulation S-K.

[56] Item 402(b)(2)(iv)(C) of Regulation S-K. For purposes of the LTIP Payout column of the Summary Compensation Table and the LTIP Awards Table discussed below, the term "long-term incentive plan" is defined as any plan providing compensation intended to serve as incentive for performance to occur over more longer than one fiscal year (whether by reference to the registrant's financial performance, stock price, or other measures), other than restricted stock, options and SARs. Item 402(a)(7)(iii) of Regulation S-K.

Instruction 1 to Item 402(b)(2)(iv) of Regulation S-K.

[58] Instruction 4 to Item 402(b)(2)(iv) of Regulation S-K.

[59] Item 402(b)(2)(v) of Regulation S-K.

[60] Instruction 1 to Item 402(b)(2)(v) of Regulation S-K. Those items are reported in other tables.

[61] In contrast to disclosure of termination or severance arrangements and golden parachutes under Item 402(h), this requirement is not subject to a dollar reporting threshold.

[62] This does not include payouts pursuant to employee benefit plans, whether defined contribution plans or defined benefit or other actuarial plans.

[63] Item 402(b)(2)(v)(B) of Regulation S-K. See supra Section II.B.2.b.

[64] Item 402(b)(2)(v)(C) of Regulation S-K.

[65] Item 402(b)(2)(v)(D) of Regulation S-K.

[66] Earnings on DCP contributions need not be reported.

[67] Instruction 2 to Item 402(b)(2)(v) of Regulation S-K.

As adopted, the portion of the premium paid by the registrant in the covered fiscal year pursuant to a split-dollar arrangement that is attributable to term life insurance coverage for the executive officer will continue to be reported in full.[68] In response to the commenters' concern, however, registrants will be given the option of reporting either: (1) The full dollar value of the remainder of the premiums paid by or on behalf of the registrant during the covered fiscal year; or (2) the current dollar value of the benefit to the executive officer of the remainder of the premium paid by or on behalf of the registrant during the fiscal year. The benefit must be determined for the period, projected on an actuarial basis, between the payment of the premium and its refund at the earliest possible time to the registrant.[69] In addition, consistent with the treatment of registrant contributions to defined contributions plans, reporting of split-dollar premiums paid by a registrant (including the term insurance portion) has been moved to the All Other Compensation column.[70]

[68] The executive is deemed to receive a currently taxable economic benefit to the extent of the employer's payment of the cost of term insurance coverage. IRS Pension Service Table 58; see H. Zaritsky & S. Leimberg, Tax Planning with Life Insurance ¶¶ 65.05[1], [2] (1991).

[69] The same treatment would be accorded loans made to the named executive officers to fund such arrangements.

The same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to the table.

[70] Item 402(b)(2)(v)(E) of Regulation S-K.

*C. Option/SAR Tables*

A number of commenters suggested streamlining the series of Options/SAR tables originally proposed, particularly to consolidate tables and, to the extent consistent with shareholder informational needs, to reduce the amount of detail required. Accordingly, amended Item 402 prescribes two tables—a combined table including individual grant and related potential valuation table, and a combined table including aggregated exercise and year-end holdings value information. The proposed Option/SAR Summary Report that detailed the nature and extent of the registrant's use of options has been deleted, and a new column added to the grant table to reflect the percent of options and SARs granted to all employees in the year represented by each grant to each named executive officer. Much of the information contained in that summary report was duplicative of information provided for the named executives under revised Item 402, or in the annual report on Form 10-K or the annual report to security holders.[71]

1. Individualized Option/SAR Grants in the Last Fiscal Year

The newly combined grant/potential value table requires, for each of the named executive officers, information regarding individual grants of options/SARs made in the last completed fiscal year, and their potential realizable values.[72] Small business issuers are not required to include the valuation information required under columns (f) and (g).[73] This information originally was proposed to be furnished in the tables entitled "Values Based on Assumed Rates of Stock Price Appreciation for Options Granted in Last Fiscal Year" and the "Individual Grants in the Last Fiscal Year." The reconstituted table, as adopted, appears below:

[71] Information concerning the number of outstanding options is reported in the registrant's financial statements. See Accounting Research Bulletin No. 43, Ch. 13B, ¶ 15.

[72] Item 402(c) of Regulation S-K.

[73] Item 402(a)(1)(i) of Regulation S-K.

OPTION/SAR GRANTS IN LAST FISCAL YEAR

| Individual Grants | | | | | Potential realizable value at assumed annual rates of stock price appreciation for option term | | Alternative to (f) and (g): Grant Date Value |
|---|---|---|---|---|---|---|---|
| Name | Options/SARs granted (#) | Percent of Total options/SARs granted to employees in fiscal year | Exercise or base price ($/Sh) | Expiration date | 5% ($) | 10% ($) | Grant date present value $ |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (f) |
| CEO | | | | | | | |
| A | | | | | | | |
| B | | | | | | | |
| C | | | | | | | |
| D | | | | | | | |

a. *Individualized Grant Information.* A broad cross-section of the commenters supported the need for the individualized grant data called for by the table. Required information on individual option grants includes the number of options/SARs granted, the percent of total grants to employees represented by each grant, the per-share exercise or base price, and the expiration date. Repriced options or SARs must be reported as new grants.[74] A separate column must be added disclosing the grant-date market price of the registrant's stock if options or SARs are granted at an exercise price below fair market value.[75]

A single grant with different exercise or base prices, performance vesting thresholds,[76] or expiration dates will be reported as separate grants with respect to each tranche with a different exercise or base price, performance threshold or expiration date. Multiple grants in a fiscal year may be aggregated where they have the same exercise or base

[74] Instruction 2 to Item 402(c) of Regulation S-K.

[75] "Market price" may be calculated either by reference to the closing market price per share of the underlying security, or to any other formula for determining market price prescribed for the option or SAR. Instruction 6 to Item 402(c) of Regulation S-K.

[76] This would be the case with performance options, where the exercise price is set at current market, but vesting is tied to stock price increases.

price and expiration date, and are not subject to disparate performance vesting thresholds.[77]

As under the proposal, the final rules mandate disclosure of performance criteria and other material terms of the option or SAR granted.[78] Examples include option reload mechanisms, tandem instruments, tax reimbursement, or "gross-up" provisions, and provisions (other than antidilution provisions) structured to adjust the option exercise price. If the exercise or base price of an option or SAR could be lowered at any time during its term (other than through operation of an antidilution provision), the registrant must clearly and fully disclose these provisions and their potential consequences either by footnote or accompanying textual narrative.[79]

b. *Potential Realizable Value Information or Alternative Grant-Date Option/SAR Value.* In the proposing release, the Commission indicated that it had considered requiring option grant-date valuation disclosure in the Summary Compensation Table, but concluded that shareholders might be better served by data reflecting a range of potential realizable values calculated on the basis of various assumed stock price appreciation rates over a period of 10 years. A number of commenters urged the Commission to reconsider its decision not to require option valuation, on the ground that such valuation is recognized as valid and generally relied upon in the market. Other commenters argued against mandating a specific valuation, while a number went further to argue that no value-related information should be required, either because they believed any future stock price appreciation that might be realized on exercise does not represent compensation to the executive-recipient, or any information relating to potential realizable gain would be inherently speculative and therefore inappropriate.

In light of the significant commenter support for grant-date valuation, Item 402(c) has been revised to allow registrants to report the grant-date option or SAR value. Those registrants that do not opt to disclose grant-date value would instead provide the data called for by the mandated potential option value columns. Repriced options or SARs reported as new grants would be subject to this disclosure.

The potential value columns of the new table have been refined in light of the comments received. Changes to the proposed assumed rates of stock price appreciation were made in response to comments that the appreciation rate should be specified at an annual rate to accommodate different option periods, and that the highest rate proposed, 200%, was unrealistic for many companies.

In response to these concerns, the rule provides for assumed annual appreciation rates and use of the actual option or SAR term. In determining the potential appreciation applicable to a given option or SAR, the registrant will apply the annual appreciation rate compounded annually for the full term of the option or SAR. Registrants will report potential option or SAR gain values based on assumed annualized rates of stock price appreciation of 5% and 10% over the term of the option or SAR granted, with appreciation to be determined as of the expiration date of the option or SAR.[80] Assuming a 10-year term and annual compounding, this would result in total potential appreciation of 63% and 159%, respectively.

Where the registrant chooses to use the grant-date valuation alternative, the valuation should be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes option pricing model, the description may be limited to a simple indication of the use of such pricing model. In the event another valuation method were to be used, the registrant would be required to describe the methodology as well as any material assumptions.

For awards of discount options or SARs with an exercise or base price below the market price of the underlying stock, a new 0% column must be added. In a change from the proposal, the final rules permit, but do not require registrants that have established minimum stock price appreciation levels, sometimes referred to as "hurdles," or any other performance-related conditions to vesting, to insert additional columns to demonstrate the effect of the premium strike price. Registrants also would be free to add columns reflecting either zero appreciation, where assuming the exercise or base price is at or above the market price on the date of grant, and historical appreciation,[81] respectively, information that a number of commenters suggested would be useful. With respect to indexed options, registrants that wish to reduce the potential realizable gain to reflect the impact of indexing must disclose the operative assumptions applied, either in a footnote or narrative accompanying the table.[82]

### 2. Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Values

To streamline further the information required with respect to options, the proposed Option Exercise Table and Options Held at FY-End Table have been simplified and consolidated into a single table.[83] This table, as adopted, is depicted below:

[77] Instruction 1 to Item 402(c) of Regulation S–K.
[78] Instruction 3 to Item 402(c) of Regulation S–K.
[79] Instruction 5 to Item 402(c) of Regulation S–K.

[80] For example, the potential realizable values of an option for 1000 shares with an exercise price of $10, and a five-year term, would be reported as $2,763 (5%) and $6,105 (10%).

[81] Instruction 8 to Item 402(c) of Regulation S–K.
[82] Instruction 4 to Item 402(c) of Regulation S–K.
[83] Item 402(d) of Regulation S–K.

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

| Name | Shares acquired on exercise (#) | Value realized ($) | Number of unexercised options/SARs at FY-End (#) exercisable/ unexercisable | Value of unexercised in-the-money options/SARs at FY-end ($) exercisable/ unexercisable |
|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) |
| CEO | | | | |
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |

Unlike the proposal, the rules as adopted permit presentation of option/SAR exercise information on an aggregated basis for each named executive. Many of those commenting on the proposed individualized exercise format did not see the need for separate disclosure of each exercise to assess registrant compensation practices. Information concerning expiration dates and annualized gain have also been eliminated as unnecessary.

Other than substituting the terms "exercisable" and "unexercisable" for the proposed "vested" and "unvested" terminology at commenters' request, the required information with respect to options and freestanding SARs held at fiscal year-end is unchanged from the proposal. Though some commenters questioned the need for this information, others indicated that, in assessing option awards in a given year, the amount and potential value of options held by an executive officer were important items of information.

An instruction states that the value of exercised options and unexercised in-the-money options is calculated by subtracting the exercise or base price from the fair market value of the securities underlying the options or SARs as of the exercise date or the fiscal year-end, respectively.[84] Thus, the withholding of shares to pay the exercise price or taxes will not affect the calculation.[85]

*D. LTIP Awards*

As proposed, long-term incentive plan [86] compensation granted to the named executive officers during the last fiscal year would have been required to be disclosed in tabular format on a plan-by-plan basis. However, consistent with other efforts to streamline and consolidate the data sought, the proposed Stock Price-Based Plans table (LTIP Table A) and the Non-Stock Price-Based Plans table (LTIP Table B) have been consolidated,[87] the information sought streamlined, and the payout information deleted as duplicative of information in the Summary Compensation Table.[88]

The revised, consolidated table is as follows:

[84] Instruction 1 to Item 402(d)(2) of Regulation S-K.

[85] Tax reimbursement payments by the registrant to the executive officer for taxes, commonly known as "gross-ups," would not be reflected in this table, but would be reported in the "Other Annual Compensation" column of the Summary Compensation Table. Instruction 2 to Item 402(d)(2) of Regulation S-K.

[86] See Item 402(a)(7)(iii) of Regulation S-K for the definition of this term.

[87] Item 402(e) of Regulation S-K.

[88] The requirement for disclosure of grant date value has been deleted. At the suggestion of commenters, the titles of the target value award columns have been revised to reflect more accurately the actual terminology of a majority of plans covered.

LONG-TERM INCENTIVE PLANS - AWARDS IN LAST FISCAL YEAR

| Name | Number of shares, units or other rights (#) | Performance or other period until maturation or payout | Estimated future payouts under non-stock price-based plans | | |
|---|---|---|---|---|---|
| | | | Threshold ($ or #) | Target ($ or #) | Maximum ($ or #) |
| (a) | (b) | (c) | (d) | (e) | (f) |
| CEO | | | | | |
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |

As under the proposal, the final rule encompasses awards under long-term incentive plans that are stock-based,[89] where the measurement of the benefits to be received by the executive is a function of movements in the market price of the underlying registrant security, as well as plans prescribing performance criteria other than or in addition to market price.[90] As noted above, restricted stock awards whose vesting is conditioned upon the satisfaction of a specified performance goal as well as the passage of time will be reported in this table if not reported as awards of restricted stock in the Summary Compensation Table. Tandem grants of two instruments, only one of which may be covered by this provision, would be required to be reported only in the table applicable to the other instrument; duplicative reporting as a long-term incentive plan award is not required. For example, the grant of an option in tandem with a performance share or unit would be disclosed as an option grant.[91]

[89] As contemplated by the proposing release, grants of instruments such as phantom stock (denominated in "shares" or "options") and performance share units payable on the basis of the registrant's stock price performance would be reported in this table.

[90] Each LTIP award to a named executive officer in the last completed fiscal year would be disclosed, with an identification of the plan involved if there was more than one such award. Instruction 3 to Item 402(e) of Regulation S-K.

[91] Instruction 6 to Item 402(e) of Regulation S-K. The tandem instrument would be disclosed as a material term of the option. Instruction 3 to Item 402(c) of Regulation S-K.

Other required disclosures carried over from the proposal are the estimated payouts realizable in relation to the performance targets, and a description in footnote or narrative text of both the performance-based formula or measure and the range of performance necessary to achieve the threshold,[92] target [93] and maximum [94] payout amounts. As suggested by some commenters, the rule permits a registrant to substitute a representative amount if it is unable to determine the target award range. Estimated payout information is not required for plans based solely on stock price. Actual amounts paid or payable (but deferred at the election of the named executive officer) at maturation, both for such plans and non-stock price-based plans, must be disclosed in the Summary Compensation Table.

Registrants may use more generalized disclosure to the extent necessary to preclude disclosure of confidential business information.[95] A general statement similar to the following would satisfy this requirement for a performance plan tied to achieving certain specified growth rates of a registrant's return on equity.

*Illustration:* Payouts of awards are tied to achieving specified levels of return on equity. The target amount will be earned if 100% of the targeted EPS growth rate is achieved. The threshold amount will be earned at the achievement of 90% of the targeted EPS growth rate and the maximum award amount will be earned at achieving 130% of the targeted EPS growth rate.

### *E. Pension and Other Defined Benefit or Actuarial Plan Disclosure*

Item 402(f), which covers pension and other defined benefit or actuarial retirement plans, has been adopted substantially as proposed, except that it does not include disclosure with respect to defined contribution plans.[96] Rather, like the former Item 402 requirement, the revised item limits disclosure to estimated post-retirement benefits under pension and other defined benefit or actuarial plans. No information regarding these plans is required to be presented in the Summary Compensation Table.

The principal change from the former requirements is that the revised item focuses on estimated annual benefits payable, thus eliminating the plan descriptions cited by many commenters as both unnecessary and confusing.[97] As under the former requirements, two methods of providing the estimated benefits information are provided: for plans under which benefits are determined primarily by final (or average final) compensation, a table showing benefits by compensation and years of service classifications; [98] and for plans under which benefits are determined in a different manner, a description of the formula and the estimated annual amounts payable for each of the named executives.

With respect to plans under which benefits are determined primarily by final compensation, registrants must disclose the entire pensionable compensation base, and include all prospective benefits in the mandated table, whether payable under qualified or non-qualified plans. While the former item required that covered compensation be related to the compensation reported in the Cash Compensation Table, the revised item refers instead to the broader compensation base reflected in the Summary Compensation Table.[99]

Questions were raised by commenters as to the need to disclose annual accruals in connections with defined benefit or actuarial plans pursuant to this or any other part of Item 402. Such disclosure is not required.

### *F. Director Compensation*

No change has been made to former Item 402 requirements governing disclosure of director compensation, except for a clarifying instruction.[100] Under the broad language of the former and current provisions, disclosure of any standard or non-standard compensation arrangement must be made in textual narrative, naming each director thus compensated and stating the specific amounts paid. An instruction has been added to the former requirement to make it clear that the material terms of non-standard arrangements with directors, including consulting arrangements, must be described. Registrants must include the full amount paid under any consulting arrangement in the last completed fiscal year.

As discussed in the proposing release, questions have arisen under former Item 402 as to its application in the case of "charitable award" or "director legacy" programs. Under such programs, registrants typically agree to make a future donation to one or more charitable institutions in a participating director's name, payable by the registrant upon the director's death or retirement, or some other designated event. Funding vehicles for these programs commonly take the form of corporate-owned insurance policies on the lives of participating directors.

Various corporate and other commenters maintained that charitable award or legacy arrangements need not be disclosed, since the directors are not receiving value through the arrangement. Other commenters contended that such arrangements should be disclosed to shareholders since the arrangements clearly relate to directors' board service, and the premiums can be considerable, particularly relative to amounts paid annually to directors, and are material in assessing the relationship of directors to the registrant. The Commission agrees, and thus reaffirms its initial conclusion that such arrangements are required to be disclosed pursuant to the requirements of Item 402(g).

In response to the Commission's request for comment on the need to revise the director compensation disclosure provisions governing disclosure of other arrangements

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[92] Instruction 4 to Item 402(e) of Regulation S-K (defining "threshold" as "the minimum amount payable for a certain level of performance under the plan").

[93] Id. (defining "target" as "the amount payable if the specified performance target(s) are reached").

[94] Id. (defining "maximum" as "the maximum payout possible under the plan").

[95] Instruction 2 to Item 402(e) of Regulation S-K.

[96] Accordingly, the only information required for DCPs will be the registrant's annual contributions reported in the "All Other Compensation" column of the Summary Compensation Table.

[97] Information on terms of non-qualified plans other than the payment schedule will continue to be available in exhibits to the registrant's Form 10-K, as discussed below.

[98] Instructions 4 and 5 to former Item 402(b) of Regulation S-K, which relate to the pension table, were not included in the proposal, but have been restored to the item as revised. Instructions 1 and 2 to Item 402(f) of Regulation S-K.

As proposed and adopted, the sample table provides remuneration categories up to $500,000 to reflect compensation trends, rather than up to $225,000, as formerly. However, registrants need not extend the table beyond amounts applicable to the company. Item 402(f)(1) of Regulation S-K.

[99] As proposed, only annual compensation items would have been covered. By contrast, as adopted, compensation required to be reported under *any* column of the Summary Compensation Table must be included if it comprises part of the pensionable compensation base pursuant to the plan.

[100] Instruction to Item 402(g)(2) of Regulation S-K

entered into in consideration of a director's service, several commenters endorsed the need for clarification of the nature and scope of the mandated disclosure with respect to director charitable award or legacy arrangements. Application of the new instruction will require registrants to identify each director participant and the amount of the total legacy or award.

*G. Employment Contracts and Termination, Severance and Change-of-Control Arrangements*

The Commission has amended the proposed line item requiring a narrative description of registrant termination of employment and change-of-control arrangements to encompass all employment contracts with the CEO or any other named executive, and, consistent with the upward adjustment of the dollar benchmark for designating named executives, to raise the reporting threshold from $60,000 to $100,000.[101] A number of commenters pointed out that shareholders have a clear interest in knowing what contractual commitments the board has made on behalf of the registrant, both with respect to present inducements to join the registrant's top management and future promises, and that the Commission should not delete the requirement to disclose employment contracts in its revision of Item 402.

*H. Board Compensation Committee Report*

The proposal to require a report by the Board Compensation Committee of the bases for named executive officer compensation and the relationship of such compensation to company performance provoked the strongest comment of any of the proposals concerning executive compensation. While shareholders expressed great enthusiasm for the report, the corporate community and practicing bar raised substantial concerns. Some argued that the report was an undue intrusion into the internal affairs of the company and interfered with the operation of the state-law business judgment rule; others argued that the report would interfere unduly with the functioning of the Committee and would deter people from serving as directors. Some questioned the authority of the Commission to require such disclosure, and suggested that the Commission has not previously required, and should not begin to require, disclosure of the bases for board or committee actions. These commenters contended that individual directors vote on a particular matter for a myriad of reasons, at times adopting compromise positions, and that disclosure of such information therefore should not be required. A number of commenters also raised concerns about the appropriateness of public assessments of individual officers' performances, particularly in the case of those other than the CEO, and the need for disclosure of proprietary business information in the discussion of the performance of these executive officers. Finally, many raised concerns about the potential for litigation with respect to these reports, particularly in light of the signature requirement.

The Commission continues to believe that disclosure of the Compensation Committee's policies will enhance shareholders' ability to assess how well directors are representing their interests, and thus is an appropriate and necessary improvement to the disclosure concerning executive compensation in the proxy statement clearly within the Commission's authority. The disclosure does not impose new fiduciary standards on directors, or require any particular actions or procedures. Also, it is not inconsistent with the business judgment standards that, where applicable, protect reasonable and good faith action by the directors. While some contend that requiring a discussion of the bases for Compensation Committee or Board action is unprecedented, extensive disclosure is required as to the Board's basis for concluding that a going-private or roll-up transaction is fair to shareholders.[102]

The Commission does not intend to disrupt the discussions among the Compensation Committee members. To the extent that the proposing release, in its analogy to the Management's Discussion and Analysis requirement,[103] suggested to readers that the report should outline these discussions, that is not the intent of the requirement. To the contrary, the report requires disclosure of the bases for the Committee's action, and the Committee's discussion of the relationship, if any, between corporate performance and executive compensation. It does not require a discussion of each individual Committee members' reasons or motivations for supporting the Committee's recommendations. A description of the rationale of the Committee for the reported compensation and its relationship to performance is all that is required.

In response to concerns expressed by commenters with respect to application of the proposed report requirement to the named executive officers subordinate to the CEO, the Commission has revised the requirement to limit the specific discussion to the CEO.[104] In place of the discussion of the compensation of each of the other named executives and its relationship to registrant performance, a discussion is required of the compensation policies with respect to the registrant's executive officers, including the extent to which such compensation (in the aggregate) is performance-related, and the performance measures that are considered (e.g., sales, earnings, return on assets, return on equity or market share).[105] As under the proposal, the Committee would not be required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, or any factors or criteria involving confidential commercial or business information, disclosure of which would adversely affect the registrant.[106]

The Commission appreciates the concern registrants have expressed about litigation. The purpose of the report is to inform shareholders of the Committee's good-faith rationale for its compensation actions. If shareholders are not satisfied with the decisions reflected in the report, the proper response is the ballot, not resort to the courts to challenge the disclosure. To make clear the Commission's intentions in this regard, the provisions requiring the report, as well as the related requirement for the Performance Graph discussed below, have been revised to provide for the same treatment of such disclosures as accorded information required to be delivered to shareholders in connection with the annual election of directors in the annual report.[107] Specifically, the disclosure will not be deemed soliciting material or to be filed under section 18.[108]

[101] Item 402(h) of Regulation S–K.

[102] See Rule 13e-3 under the Exchange Act [17 CFR 240.13e-3]; Item 8 of Schedule 13E–3 [17 CFR 240.13e-100]; Item 910 of Regulation S–K [17 CFR 229.910].

[103] Item 303 of Regulation S–K [17 CFR 229.303].

[104] Item 402(k)(2) of Regulation S–K.

[105] Item 402(k)(1) of Regulation S–K.

[106] Instruction 2 to Item 402(k) of Regulation S–K.

[107] See Rule 14a-3(c) under the Exchange Act [17 CFR 240.14a-3(c)].

[108] 15 U.S.C. 78r. Specifically, revised Item 402(a)(9) provides that this material shall not be (citations omitted): "deemed to be 'soliciting material' or to be 'filed' with the Commission or subject to Regulation 14A or 14C, or to the liabilities of Section 18 of the Exchange Act, except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into any filing under the Securities Act or the Exchange Act."

The rules also have been revised to specify that the Board Compensation Committee Report and the Performance Graph are required only in a proxy or information statement relating to an annual meeting of security holders (or special meeting or written consents in lieu of such meeting) at which directors are to be elected.[109] Accordingly, this information is not deemed to be incorporated by reference into any Securities Act or Exchange Act filing, except to the extent that the registrant specifically incorporates it by reference into such filing.

While the Board Compensation Committee Report will continue to be made over the names of the Compensation Committee members, the requirement for individual signatures has been deleted in response to comment. The signature requirement was intended simply to increase the Committee members' focus on the specific disclosure obligation. The requirement that the report be made over the names of the Committee will accomplish the same purpose and avoid the practical difficulties involved in obtaining manual signatures.[110]

Questions have been raised as to the consequences of board review of the Compensation Committee action or recommendations with respect to executive compensation. No additional disclosure or report will be necessary, unless the Board of Directors rejects or modifies, in any material way, the action or recommendations of the Compensation Committee with respect to CEO compensation or executive officer compensation policies. In such case, the report would be made over the names of the members of the Board and would include disclosure of the reasons that the Board was providing the report rather than the Compensation Committee.[111]

If the registrant does not have a compensation committee or other board committee performing equivalent functions, the requirements with respect to the Compensation Committee Report will apply to the entire board of directors.

Finally, in response to the concerns raised by commenters about requiring discussion of compensation decisions with respect to particular executives made prior to the adoption of the new requirements, the decisions made prior to the effective date of revised Item 402 with respect to the CEO's compensation may be excluded from Board Compensation Committee Report disclosure.

*I. Performance Graph*

With certain modifications, the Commission has adopted the proposal requiring registrants to provide a line graph comparing the registrant's cumulative total shareholder return with a performance indicator of the overall stock market and either a published industry index or registrant-determined peer comparison. In prescribing such a comparison, the Commission recognizes that many and varied performance benchmarks other than shareholder return are used in the design of executive compensation packages. However, as reflected in many shareholder letters of comment, shareholder return is a primary benchmark for shareholders and investors in assessing corporate performance.

In response to commenters' recommendations that registrants, particularly those not in the S&P 500, be given the flexibility to select another broad market index, revised Item 402(*l*) now affords registrants that are not included in the S&P 500 a choice to use another broad equity market index [112] that includes companies that trade on the same exchange or NASDAQ market, or are of comparable market capitalization. Registrants will be expected to use the same index from year to year, absent an accompanying narrative explanation of the reasons for the change.[113] In addition to providing this explanation, a registrant that selects a new index for comparison in a given fiscal year must compare its return with that on both the old and new index in the graph appearing in that year's proxy or information statement.

In another change from the proposal, this provision requires that the total return figures be presented on a dividend reinvested basis. Commenters have pointed out that only in this manner will inter-company comparability be assured. Companies that have elected to pass excess cash flow through to investors otherwise would appear to have provided a significantly lower return than in reality would be the case.

Under the proposal, issuers were free to set the base year at any point in time, so long as a minimum five-year period was depicted. A number of commenters noted that such an approach could lead to the selection of a base year beyond five years for the sole purpose of casting performance in an unduly favorable light. The rule as adopted thus establishes a mandatory measurement point fixed at the close of trading on the last trading day preceding the first day of the fifth preceding fiscal year, with disclosure mandated from that time through and including the registrant's last completed fiscal year.[114] A shorter period may be used if the class of registrant equity forming the basis for the comparison has been registered under the Exchange Act for a shorter time. Adopting a mandatory measurement point not only will reduce the potential for manipulation, but also will enhance inter-company comparability.

The proposed rules also would have required registrants to compare their total return against a group of peer companies, using either return on a nationally recognized industry index or a registrant-constructed peer group index. In response to commenter questions about the definition of a "nationally recognized index," the term "published index" has been substituted in the final rule to make clear that the Commission is not limiting the indices that may be used.[115] The rules also have been revised to clarify that the registrant has broad discretion in determining its peer comparison. The comparison may be made to one or a number of other companies, including foreign issuers. Moreover, the registrant may use bases other than its industry or line of business for determining its peer comparison, so long as such bases are disclosed.

Several commenters expressed concern regarding difficulties likely to be encountered in presenting the requisite peer comparison, particularly by registrants whose peers are privately-held companies, or

[109] Item 402(a)(8). The same treatment is given to the Option Repricing disclosure discussed below.

[110] Item 402(k)(3) of Regulation S–K.

[111] *Id.*

[112] For example, the following broad indices may be used if total return data on a dividend reinvested basis are shown in a manner consistent with the format required by item 402(*l*): the S&P 500 Composite Index, the Dow Jones Equity Market Index, the American Stock Exchange Market Value Index, the Wilshire 5000 Equity Index, and the Russell 1000, 2000 or 3000. Mandated use of the S&P 500 for registrants included in that index will enhance inter-company comparability. The S&P 500 composite is one of the 12 recognized leading economic indicators used by the Department of Commerce. See The Handbook of Cyclical Indicators (Dept. Commerce 1984). See also Economic Report of the President (transmitted to Congress February 1992) at 403.

[113] Item 402(*l*)(4) of Regulation S–K.

[114] Item 402(*l*)(2) of Regulation S–K. Registrants would be free to include earlier years in the comparison, but would be required to use the prescribed base point. Instruction 3 to Item 402(*l*).

[115] The term "published index" means any index which was prepared by a party other than the registrant or an affiliate and is accessible to the registrant's shareholders. An exception is provided for those indices prepared by a registrant or affiliate that are widely recognized and used, since the potential for conflict is mitigated by wide-spread and multiple usage. Item 402(*l*)(3) of Regulation S–K.

subsidiaries or divisions of larger publicly-held companies. To address this concern, the rule now gives registrants that do not believe it feasible to provide a peer comparison to disclose this belief, and to compare their shareholder return to one or more companies selected on the basis of similar market capitalization

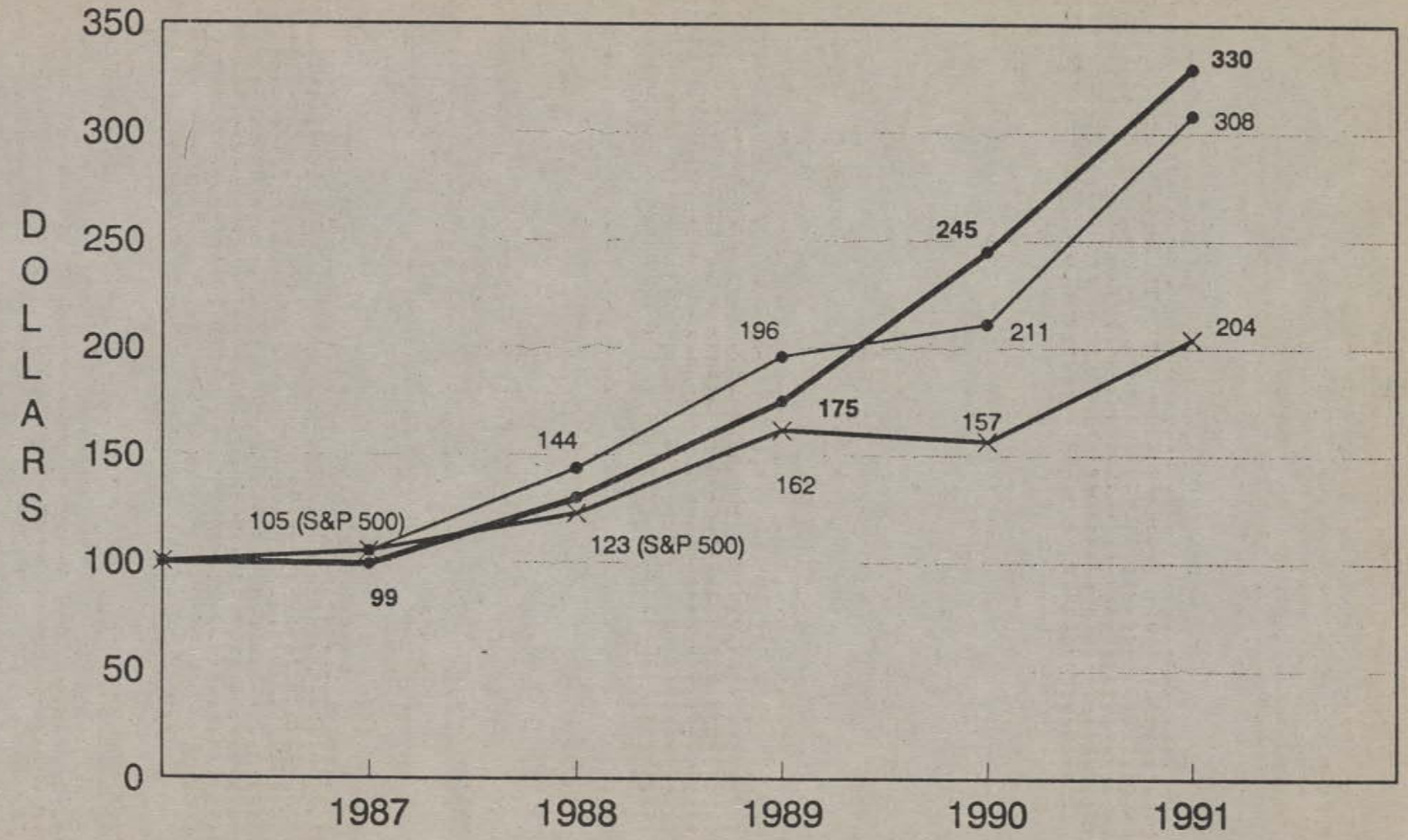
To the extent feasible, the registrant should use comparable methods of presentation and assumptions for the total cumulative return calculations necessary for the requisite broad market and peer index comparisons with the registrant's return. Where the registrant elects to construct its own peer group index, the same methodology must be used in calculating both the registrant's total return and that on the registrant-constructed peer index.

To illustrate:

BILLING CODE 8010-01-M

BILLING CODE 8010-01-C

## COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN*
## AMONG XYZ CORP, S&P 500 INDEX & S&P FOOD PRODUCTS INDEX**




ASSUMES $100 INVESTED ON JANUARY 1, 1987 IN XYZ COMMON STOCK, S&P 500 INDEX & S&P FOOD PRODUCTS INDEX

*TOTAL RETURN ASSUMES REINVESTMENT OF DIVIDENDS

** FISCAL YEAR ENDING DECEMBER 31

Commenters also expressed concern over the possibility of increased exposure to liability in connection with identifying peer companies and constructing an appropriate index. As noted above, the Performance Graph, as adopted, will receive the same treatment as the annual report to security holders, and will appear only in registrant proxy or information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors are to be elected. This disclosure will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference into any such filing.[116]

[116] Items 402 (a)(8) and (a)(9) of Regulation S-K. Registrants may provide, in their discretion, additional presentations using other measures of performance for comparable periods.

*J. Option/SAR Repricing Report*

The proposed requirement for a report by a registrant's compensation committee (or other board committee performing equivalent functions, or, in the absence of any such committee, the entire board of directors) triggered by a repricing or equivalent amendment or replacement of an outstanding option or SAR has been adopted, as modified to reflect commenters' views.[117] Triggering events under this provision have been narrowed to include only repricing of options or SARs held by a named executive officer, or equivalent amendment or replacement of options or SARs, effected in the last completed fiscal year and after the effective date of these rules. Further, the requirement does not extend to any repricing transactions that occurred before a registrant became subject to the reporting provisions of section 13(a) or 15(d) under the Exchange Act.

As adopted, the report requirement is triggered by any action taken in the last completed fiscal year to lower the exercise price of an option or SAR held by a named executive officer, whether through amendment, cancellation or replacement grants or any other means.[118] The rule does not cover post-grant strike price changes resulting from: a formula-based repricing mechanism in existence at the time of grant, which is characteristic of some indexed and premium priced options; the operation of a plan antidilution provision; or a recapitalization or similar transaction affecting equally all holders of securities of the same class.[119]

If a triggering event within the scope of the rule occurs, a report must be provided over the names of the members of the appropriate registrant committee discussing the reasons for the repricing of the named executives' options and SARs during the last completed fiscal year.[120] In addition, the registrant must provide tabular information with respect to the repricing of options/SARs held by any executive officer over the shorter of the last ten completed fiscal years or the period in which the registrant has been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. This 10-year disclosure period was selected to reflect the typical 10-year term of a compensatory stock option.

Except as narrowed to focus solely on repricing, the repricing table is unchanged from the proposal:

[117] Item 402(i) of Regulation S-K.

[118] For example, in addition to a traditional option or SAR repricing, the report would be triggered by the grant of a tandem option at or below market price relating to an existing underwater option, where cancellation or replacement of the old option may not occur until some time later, when the new, tandem option is exercised.

[119] Instruction 4 to Item 402(i) of Regulation S-K.

[120] Instruction 1 to Item 402(i) of Regulation S-K.

TEN-YEAR OPTION/SAR REPRICINGS

| Name | Date | Number of options/ SARs repriced or amended (#) | Market price of stock at time of repricing or amendment ($) | Exercise price at time of repricing or amendment ($) | New exercise price ($) | Length of original option term remaining at date of repricing or amendment |
|---|---|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| | | | | | | |

The 10-year repricing table need not be provided by a small business issuer eligible to use Regulation S-B.[121]

*K. Additional Information with Respect to Compensation Committee Interlocks and Insider Participation in Compensation Decisions*

Revised Item 402(j) requires disclosure of specified information regarding the relationships of members of the registrant's board of directors under circumstances in which shareholders may have greater concerns regarding the independence of board compensation decisionmaking. This provision has been substantially revised from that proposed. As noted above, small business issuers eligible to use Regulation S-B are not subject to the Compensation Committee Interlocks and Insider Participation disclosure requirement.[122]

The relationships provisions have been substantially reformatted, and no longer require disclosure in the event of option or SAR repricing. The revised provisions require disclosure under a specified caption—"Compensation Committee Interlocks and Insider Participation." The provision requires that the registrant identify the members of its compensation committee (or other committee performing comparable functions), specifying any member who:

(a) Was, at any time during the last completed fiscal year, an officer or employee of the registrant or any of its subsidiaries;

(b) Was formerly an officer of the registrant or any of its subsidiaries; or

(c) Had any relationship requiring disclosure by the registrant under Item 404 of Regulation S-K.

If any relationship requiring Item 404 disclosure existed, the information required by Item 404 with respect to that person must be set forth.

In the event the registrant does not have a compensation committee (or committee with comparable responsibilities), the item requires disclosure of the participation in its Board of Directors' deliberations on executive compensation by any officer or employee, or former officer, of the registrant or any of its subsidiaries.

[121] Item 402(a)(1)(i) of Regulation S-K.

[122] Item 402(a)(1)(i) of Regulation S-K.

Disclosure of specified executive officer-director interlocks continues to be required. The interlocks requiring disclosure have been revised to include those situations where an executive officer of one company serves on the compensation committee of another company that has an executive officer serving on the first company's board of directors. In response to the proposing release's inquiry, several commenters responded that the potential conflict of interest in this circumstance was sufficiently great to require the interlock disclosure. [123] Interlocks involving not-for-profit entities have been excluded in response to public comment that such relationships do not raise the same level of concern with respect to the independence of the compensation-setting process. [124]

Where a specified interlock existed, the proposal would have required disclosure of all financial interests in excess of $60,000 between the registrant and the director of the registrant who served as an executive officer of the other entity (and his or her affiliates). The proposal also called for disclosure of any means by which that interlocking director could benefit from actions of the registrant or its executive officers, and all discussions relating to compensation matters between the interlocking director and members of the compensation committee. These disclosures have been reduced substantially; in particular, the requirements with respect to benefits from actions of the registrant and discussions relating to compensation have been deleted. Instead, the provision as adopted requires that the relationship disclosure mandated under Item 404 of Regulation S–K accompany disclosure of the interlock.

Finally, in response to comments urging the Commission to allow for a transition period in recognition of the needs of many registrants, particularly mid-sized and smaller companies, the disclosure will be required only with respect to director relationships existing on or after January 1, 1993.

*L. Revised Schedule 14A, Item 10—Information Required in Connection with Shareholder Approval of a Compensation Plan*

The Commission has adopted proposals to simplify the proxy statement disclosure required under Item 10 of Schedule 14A (and Item 1 of Schedule 14C) for registrants that solicit shareholder action with respect to a compensation plan. Former Item 10 required extensive disclosure concerning not only of the plan subject to approval, but also of all existing compensation plans. A number of commenters agreed that information on plans not subject to a vote was not helpful to shareholders; the requirement therefore has been eliminated as proposed.

With respect to the disclosure requirements for new plans, the Commission proposed to require the requisite Item 402 information to be presented in tabular format. This proposal is being adopted without change. For existing compensation plans submitted to a vote, the former requirement for three years of detailed information as to all such plans has been eliminated, as proposed.

*M. Form 10–K Compensation Disclosure*

The Commission has adopted the proposed technical revision to Item 11 of Form 10–K to conform to the amendment to Item 10 of Schedule 14A.

In light of the proposed deletion of mandatory plan descriptions, the Commission requested comment on the need for disclosure of the location of filings containing plans limited to senior executives. The proposing release asked whether the date and type of such filings should be disclosed to facilitate shareholder review of plan terms no longer subject to disclosure under Item 402. After consideration of the comments, the Commission has revised Item 14 of Form 10–K to require an annual listing of all executive compensation plans required to be filed as exhibits to the Form, identifying the Commission filing to which a particular plan document has been appended. [125]

*N. Revised Item 403(b) Table—Security Ownership of Management*

The proposal included a table, encaptioned "Total Common Equity Based Holdings," designed to show the nature and scope of each named executive's equity stake in the registrant, unrestricted stock beneficially owned, excluding options and SARs, option shares and restricted stock held, along with direct or indirect share ownership under section 13(d) of the Exchange Act. [126] Consistent with the Commission's efforts to minimize redundant disclosure, and as suggested by a number of commenters, that table has not been adopted. The Commission instead has added the named executives to the current S–K Item 403(b) table. [127]

**III. Cost-Benefit Analysis**

In the proposing release, the Commission requested the public to supply its views and any supporting information to aid in the evaluation of the costs and benefits associated with the implementation of the proposed disclosure requirements. The Commission has considered carefully the comments received pursuant to that request. The changes made in response to these comments are designed to increase registrant cost savings without sacrificing information which would materially benefit security holders.

In response to commenters' concerns that the extent of detail required in the proposed approach would prove burdensome to registrants, and confusing to shareholders, the Commission has taken a number of steps to reduce the number of tables and limit the scope of the rules where the interests of security holders would not be harmed. To reduce the amount of information requested, four tables were eliminated in their entirety, although certain information elicited by these tables was preserved in the other sections. [128] Further, as discussed previously, a number of tables were consolidated and streamlined by reducing redundant information.

Steps also were taken to narrow the scope of the rules. In particular, commenters suggested eliminating disclosure of compensation to executive officers as a group, pointing out that the information was of little utility to shareholders, and citing the costs associated with gathering the information, particularly in view of the three-year period covered by the Summary Compensation Table. The Commission agrees with these concerns. Accordingly, significant cost reductions also should result from the elimination of executive officer group disclosure requirements.

In addition, the threshold for determining the most highly paid executives was changed, with the calculation now being based on the amount of salary and bonus paid or payable in a given fiscal year. In

[123] The interlocks covered by Item 402(j) only apply where executive officers of the registrant and the other company are involved.

[124] Instruction to Item 402(j).

[125] A conforming change has been made to Item 601(b)(10) of Regulation S–K [17 CFR 229.601(b)(10)].

[126] 15 U.S.C. 78m(d).

[127] 17 CFR 229.403(b). For purposes of the Regulation S–K Item 403(b) table, the term "officer" has been amended to refer to "executive officer."

[128] The tables eliminated or consolidated with other tables were the Option and SAR Summary Report, the Restricted Stock Table, the Enhanced Beneficial Ownership Table and the Summary of Option Repricing and Other Adjustments.

determining that amount, issuers may exclude amounts attributable to overseas assignments, unlike the proposal.

Other rules whose scope was narrowed from the proposing release include the Compensation Committee Interlocks and Insider Participation disclosure, the Report on Option/SAR Repricing and the Board Compensation Committee Report. Specifically, with respect to the latter requirement, the description of performance factors on which the Committee specifically relied upon has been limited to the CEO alone, together with a discussion of the committee's general policies with respect to executive officer compensation. Further, hypothetical rates of stock price appreciation in the presentation of potential realizable values of stock options and SARs have been reduced, and presentation of grant-date option (or SAR) values calculated pursuant to a recognized valuation formula such as the "Black-Scholes" option pricing model, will be permitted as an alternative to hypothetical values.

The Commission also has redesigned its regulatory scheme to strike a more effective balance between the concerns of certain classes of registrants and the interests of their shareholders. As discussed previously, to address the concerns of small businesses that may lack the resources available to larger registrants and that have different incentive compensation programs, the final rules exempt these issuers from many of the required new disclosures, including the Board Compensation Committee Report and the Performance Graph. In an effort to minimize the initial impact of the new regulatory scheme, small business issuers will be permitted to phase in the three year information required by the Summary Compensation Table and delay complying with the new rules for any filing made before May 1, 1993. The final rules also exempt investment companies registered under the Investment Company Act from all but the director compensation disclosure requirement. The reporting obligations of foreign private issuers using Form 20-F remain unchanged.

Issuers also have expressed concern that certain of the disclosure requirements could create significant exposure to liability for registrants that, in good faith, are seeking to comply with the rules. To address these concerns, the final rules have been restructured to specify those disclosure provisions that are required in all filings calling for Item 402 compensation information, and those provisions applicable only to a proxy or information statement relating to an annual meeting of security holders at which directors are to be elected. Those items solely required in filings related to the annual election of directors also will not be required to be included in, or incorporated by reference into any of the registrant's filings under the Securities Act or Exchange Act. To further address concerns about the potential for increased litigation, the Commission has provided that the Board Compensation Committee Report and the Performance Graph will have the same status as the annual report to security holders required pursuant to the proxy rules, and, as such will not be deemed to constitute soliciting material or to be filed for purposes of section 18 of the Exchange Act.

Another complaint voiced by commenters concerned the initial burden of complying with a new regulatory scheme. In response, the Commission has adopted transition rules applicable to specific disclosure requirements and to the overall regulatory scheme. For the Board Compensation Committee Report, registrants need only disclose specific information pertaining to compensation decisions on CEO compensation made on or after the effective date of the rule. With respect to the disclosure on additional board relationships, information need only be provided with respect to relationships existing on or after January 1, 1993. The rest of the disclosure requirements must be complied with by registrants, other than small business issuers, as follows. Registrants whose fiscal year ends on or after December 15, 1992, must comply beginning with their next proxy and information statement. In the case of registration statements filed under the Securities Act or Exchange Act or periodic reports filed pursuant to the Exchange Act, registrants need not comply for filings made before January 1, 1993.

The Commission has considered commenters' views, has modified the proposals as necessary and appropriate, and has determined that the net increases in costs, if any, resulting from the implementation of today's amendments are outweighed by the value to security holders and to the market of more readily accessible and understandable information relating to the compensation practices of public companies.

## IV. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Catherine T. Dixon, Chief, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. A summary of the corresponding Initial Regulatory Flexibility Analysis appears at 57 FR 29582 [Securities Act Release No. 6940].

## V. Effective Date

The amendments are effective upon publication in the **Federal Register**, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Commission has determined that compensation disclosure is important to shareholders being asked to elect or re-elect directors, and that improvements to such disclosure are necessary. There is good cause for the amendments to become effective immediately in order to assure that this improved disclosure will be in place for the 1993 proxy season.

Some registrants have indicated an interest in being able to satisfy the executive compensation requirements by complying with the amended rules as soon as possible. Immediate effectiveness will afford them that option.

For other registrants, the Commission has provided transition provisions. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

## VI. Statutory Basis

The amendments contained herein are being adopted pursuant to sections 3(b), 6, 7, 8, 10 and 19(a) of the Securities Act, sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act, and sections 8, 20, 24, 30 and 38 of the Investment Company Act of 1940.

## List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

## VII. Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is amended as follows:

## PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 is revised to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37 and 80b-11, unless otherwise noted.

2. By revising § 228.402 to read as follows:

### § 228.402 (Item 402) Executive compensation.

(a) General—(1) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this item, and directors covered by paragraph (f) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(4) of this item, all such compensation shall be reported pursuant to this item even if also called for by another requirement, including transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) The registrant's Chief Executive Officer or any individual acting in a similar capacity ("CEO") at the end of the last completed fiscal year, regardless of compensation level; and

(ii) The registrant's four most highly compensated executive officers other than the CEO who served as executive officers at the end of the last completed fiscal year.

**Instructions to Item 402(a)(2)**

1. *Determination of Most Highly Compensated Executive Officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii)(A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii)(A) and (B) of this item, *provided, however,* that no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed $100,000.

2. *Inclusion of Executive Officer of Subsidiary.* It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. See Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

3. *Exclusion of Executive Officer due to Unusual or Overseas Compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant's most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (b) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the CEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the CEO) served as an executive officer of the registrant (whether or not in the same position) during any part of a fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Transactions with third parties reported under item 404.* This item includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. No information need be given in response to any paragraph of this item as to any such third-party transaction if the transaction has been reported in response to Item 404 of Regulation S-B (§ 228.404).

(5) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this item:

(i) The term *stock appreciation rights (SARs)* refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock or restricted stock units, phantom stock, stock options, SARs, stock options in tandem with SARs, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *long-term incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans.

(7) *Location of specified information.* The information required by paragraph (h) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(b) *Summary compensation table*—(1) *General.* The information specified in paragraph (b)(2) of this item, concerning the compensation of the named executive officers for each of the

registrant's last three completed fiscal years, shall be provided in a Summary Compensation Table, in the tabular format specified below.

SUMMARY COMPENSATION TABLE

| Name and principal position | Year | Annual Compensation | | | Long Term Compensation | | | All other compensation ($) |
|---|---|---|---|---|---|---|---|---|
| | | | | | Awards | | Payouts | |
| | | Salary ($) | Bonus ($) | Other annual compensation ($) | Restricted stock award(s) ($) | Options/ SARs (#) | (h) LTIP payouts ($) | |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) |
| CEO | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| A | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| B | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| C | | | | | | | | |
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| D | | | | | | | | |
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| | | | | | | | | |

(2) The Table shall include: (i) The name and principal position of the executive officer (column (a));

(ii) Fiscal year covered (column (b));

(iii) Annual compensation (columns (c), (d) and (e)), including:

(A) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(B) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d)); and

**Instructions to Item 402(b)(2)(iii) (A) and (B)**

1. Amounts deferred at the election of a named executive officer, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in the salary column (column (c)) or bonus column (column (d)), as appropriate, for the fiscal year in which earned. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, that fact must be disclosed in a footnote and such amount must be disclosed in the subsequent fiscal year in the appropriate column for the fiscal year in which earned.

2. For stock or any other form of non-cash compensation, disclose the fair market value at the time the compensation is awarded, earned or paid.

3. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive in lieu of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation in lieu of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (i.e., restricted stock awards (column (f)); options or SARs (column (g)); all other compensation (column (i)), or, if made pursuant to a long-term incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Long-Term Incentive Plan Table (required by paragraph (e) of this item) where the award is reported.

(C) The dollar value of other annual compensation not properly categorized as salary or bonus, as follows (column (e)):

(*1*) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is the lesser of either $50,000 or 10% of the total of annual salary and bonus reported for the named executive officer in columns (c) and (d);

(*2*) Above-market or preferential earnings on restricted stock, options, SARs or deferred compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(*3*) Earnings on long-term incentive plan compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(*4*) Amounts reimbursed during the fiscal year for the payment of taxes; and

(*5*) The dollar value of the difference between the price paid by a named executive officer for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise), and the fair market value of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant.

**Instructions to Item 402(b)(2)(iii)(C)**

1. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a named executive officer must be identified by type and amount in a footnote or accompanying narrative discussion to column (e).

2. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Interest on deferred or long-term compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, [26 U.S.C. 1274(d)]) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate.

4. Dividends (and dividend equivalents) on restricted stock, options, SARs or deferred compensation denominated in stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the

registrant's common stock. Only the preferential portion of the dividends or equivalents must be included.

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) The dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, including share units (calculated by multiplying the closing market price of the registrant's unrestricted stock on the date of grant by the number of shares awarded) (column (f));

(B) The sum of the number of stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

(C) The dollar value of all payouts pursuant to long-term incentive plans ("LTIPs") as defined in paragraph (a)(6)(iii) of this item (column (h)).

**Instructions to Item 402(b)(2)(iv)**

1. Awards of restricted stock that are subject to performance-based conditions to vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to paragraph (e) of this item instead of in column (f). If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in column (h).

2. The registrant shall, in a footnote to column (f), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. Value shall be calculated as specified in paragraph (b)(2)(iv)(A) of this item;

b. For any restricted stock award that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in the column.

3. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or freestanding SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall include the number of options or freestanding SARs so repriced as Stock Options/SARs granted and required to be reported in column (g).

4. If any specified performance target, goal or condition to payout was waived with respect to any amount included in LTIP payouts reported in column (h), the registrant shall so state in a footnote to column (h).

(v) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Any compensation reported in this column for the last completed fiscal year shall be identified and quantified in a footnote. Such compensation shall include, but not be limited to:

(A) The amount paid, payable or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant or a change in the executive officer's responsibilities following such a change in control.

(B) The dollar value of above-market or preferential amounts earned on restricted stock, options, SARs or deferred compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during the period, or payable during the period but deferred at the election of a named executive officer, this information shall be reported as Other Annual Compensation in column (e). See Instructions 3 and 4 to paragraph 402(b) (2) (iii) (C) of this item;

(C) The dollar value of amounts earned on long-term incentive plan compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during that period, or payable during that period at the election of the named executive officer, this information shall be reported as Other Annual Compensation in column (e);

(D) Annual registrant contributions or other allocations to vested and unvested defined contribution plans; and

(E) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to term life insurance for the benefit of a named executive officer, and, if there is any arrangement or understanding, whether formal or informal, that such executive officer has or will receive or be allocated an interest in any cash surrender value under the insurance policy, either:

(*1*) The full dollar value of the remainder of the premiums paid by, or on behalf of, the registrant; or

(*2*) If the premiums will be refunded to the registrant on termination of the policy, the dollar value of the benefit to the executive officer of the remainder of the premium paid by, or on behalf of, the registrant during the fiscal year. The benefit shall be determined for the period, projected on an actuarial basis, between payment of the premium and the refund.

**Instructions to Item 402(b)(2)(v)**

1. LTIP awards and amounts received on exercise of options and SARs need not be reported as All Other Compensation in column (i).

2. Information relating to defined benefit and actuarial plans need not be reported.

3. Where alternative methods of reporting are available under paragraph (b) (2) (v) (E) of this item, the same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to column (i).

**Instruction to Item 402(b)**

Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

(c) *Option/SAR grants table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) , and freestanding SARs made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

OPTION/SAR GRANTS IN LAST FISCAL YEAR

[Individual Grants]

| Name (a) | Options/SARs granted (#) (b) | Percent of total options/ SARs granted to employees in fiscal year (c) | Exercise or base price ($/ Sh) (d) | Expiration date (e) |
|---|---|---|---|---|
| CEO | | | | |
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) The number of options and SARs granted (column (b));

(iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));

(iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant; and

(v) The expiration date of the options or SARs (column (e)).

**Instructions to Item 402(c)**

1. If more than one grant of options and/or freestanding SARs was made to a named executive officer during the last completed fiscal year, a separate line should be used to provide disclosure of each such grant. However, multiple grants during a single fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date, and the same performance vesting thresholds, if any. A single grant consisting of options and/or freestanding SARs shall be reported as separate grants with respect to each tranche with a different exercise and/or base price, performance vesting threshold, or expiration date.

2. Options or freestanding SARs granted in connection with an option repricing transaction shall be reported in this table. See Instruction 3 to paragraph (b)(2)(iv) of this item.

3. Any material term of the grant, including but not limited to the date of exercisability, the number of SARs, performance units or other instruments granted in tandem with options, a performance-based condition to exercisability, a reload feature, or a tax-reimbursement feature, shall be footnoted.

4. If the exercise or base price is adjustable over the term of any option or freestanding SAR in accordance with any prescribed standard or formula, including but not limited to an index or premium price provision, describe the following, either by footnote to column (c) or in narrative accompanying the Table:

(a) The standard or formula; and

(b) Any constant assumption made by the registrant regarding any adjustment to the exercise price in calculating the potential option or SAR value.

5. If any provision of a grant (other than an antidilution provision) could cause the exercise price to be lowered, registrants must clearly and fully disclose these provisions and their potential consequences either by a footnote or accompanying textual narrative.

6. In determining the grant-date market or base price of the security underlying options or freestanding SARs, the registrant may use either the closing market price per share of the security, or any other formula prescribed for the security.

(d) *Aggregated option/SAR exercises and fiscal year-end option/SAR Value Table.* (1) The information specified in paragraph (d)(2) of this item, concerning each exercise of stock options (or tandem SARs) and freestanding SARs during the last completed fiscal year by each of the named executive officers and the fiscal year-end value of unexercised options and SARs, shall be provided on an aggregated basis in the tabular format specified below:

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

| Name | Shares acquired on exercise (#) | Value realized ($) | Number of unexercised options/SARs at FY-end (#) exercisable/ unexercisable | Value of unexercised in-the-money options/SARs at FY-end($) exercisable/ unexercisable |
|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) |
| CEO | | | | |
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |

(2) The table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares received upon exercise, or, if no shares were received, the number of securities with respect to which the options or SARs were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise (column (c));

(iv) The total number of unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

(v) The aggregate dollar value of in-the-money, unexercised options and SARs held at the end of the fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (e)).

**Instructions to Item 402(d)(2)**

1. Options or freestanding SARs are in-the-money if the fair market value of the underlying securities exceeds the exercise or base price of the option or SAR. The dollar values in columns (c) and (e) are calculated by determining the difference between the fair market value of the securities underlying the options or SARs and the exercise or base

price of the options or SARs at exercise or fiscal year-end, respectively.

2. In calculating the dollar value realized upon exercise (column (c)), the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes, shall not be included. Payments by the registrant in reimbursement of tax obligations incurred by a named executive officer are required to be disclosed in accordance with paragraph (b)(2)(iii)(C)(*4*) of this item.

(e) *Long-Term Incentive Plan ("LTIP") awards table.* (1) The information specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

| (a) Name | (b) Number of shares, units or other rights (#) | (c) Perform-ance or other period until maturation or payout | Estimated Future Payouts under Non-Stock Price-Based Plans | | |
|---|---|---|---|---|---|
| | | | (d) Threshold ($ or #) | (e) Target ($ or #) | (f) Maximum ($ or #) |
| CEO | | | | | |
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |

(2) The Table shall include: (i) The name of the executive officer (column (a));

(ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (b));

(iii) The performance or other time period until payout or maturation of the award (column (c)); and

(iv) For plans not based on stock price, the dollar value of the estimated payout or range of estimated payouts under the award (threshold, target and maximum amount), whether such award is denominated in stock or cash (columns (d) through (f)).

**Instructions to Item 402(e)**

1. For purposes of this paragraph, the term "long-term incentive plan" or "LTIP" shall be defined in accordance with paragraph (a)(6)(iii) of this item.

2. Describe in a footnote or in narrative text accompanying this table the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. Registrants are not required to disclose any factor, criterion or performance-related or other condition to payout or maturation of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant's competitive position.

3. Separate disclosure shall be provided in the Table for each award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If awards are made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such award was made.

4. For column (d), "threshold" refers to the minimum amount payable for a certain level of performance under the plan. For column (e), "target" refers to the amount payable if the specified performance target(s) are reached. For column (f), "maximum" refers to the maximum payout possible under the plan.

5. In column (e), registrants must provide a representative amount based on the previous fiscal year's performance if the target award is not determinable.

6. A tandem grant of two instruments, only one of which is pursuant to a LTIP, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

(f) *Compensation of directors*—(1) *Standard arrangements.* Describe any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last completed fiscal year for any service provided as a director, stating the amount paid and the name of the director.

**Instruction to Item 402(f)(2)**

The information required by paragraph (f)(2) of this item shall include any arrangement, including consulting contracts, entered into in consideration of the director's service on the board. The material terms of any such arrangement shall be included.

(g) *Employment contracts and termination of employment and change-in-control arrangements.* Describe the terms and conditions of each of the following contracts or arrangements:

(1) Any employment contract between the registrant and a named executive officer; and

(2) Any compensatory plan or arrangement, including payments to be received from the registrant, with respect to a named executive officer, if such plan or arrangement results or will result from the resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries or from a change-in-control of the registrant or a change in the named executive officer's responsibilities following a change-in-control and the amount involved, including all periodic payments or installments, exceeds $100,000.

(h) *Report on repricing of options/SARs.* (1) If at any time during the last completed fiscal year, the registrant, while a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a), 78*o*(d)], has adjusted or amended the exercise price of stock options or SARs previously awarded to any of the named executive officers, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall provide the information specified in paragraph (h)(2) of this item.

(2) The compensation committee or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) shall explain in reasonable detail any such repricing of options and or SARs held by a named executive officer in the last completed fiscal year, as well as the basis for each such repricing.

**Instructions to Item 402(h)**

1. A replacement grant is any grant of options or SARs reasonably related to any prior or potential option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms; the grant of new options or SARs in tandem with previously granted options or SARs that will operate to cancel the previously granted options or SARs upon exercise; repricing of previously granted options or SARs; or otherwise. If a corresponding original grant was canceled in a prior year, information about such grant nevertheless must be disclosed pursuant to this paragraph.

2. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote or accompanying textual narrative.

3. This paragraph shall not apply to any repricing occurring through the operation of:

a. A plan formula or mechanism that results in the periodic adjustment of the option or SAR exercise or base price;

b. A plan antidilution provision; or

c. A recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

3. By amending § 228.403 by revising paragraph (b) above the table to read as follows:

**§ 228.403 (Item 403) Security ownership of certain beneficial owners and management.**

* * * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(2) (§ 228.402(a)(2)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d—3(d)(1) of this chapter.

* * * * *

4. By amending § 228.601 to revise paragraph (b)(10)(ii)(A) to read as follows:

**§ 228.601 (Item 601) Exhibits.**

* * * * *

(b) *Description of exhibits.* * * *

(10) *Material contracts.* * * *

(ii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant as defined by Item 402(a)(2) (§ 228.402(a)(2)) participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

* * * * *

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

5. The authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

6. By revising § 229.402 to read as follows:

**§ 229.402 (Item 402) Executive compensation.**

(a) *General*—(1) *Treatment of specific types of issuers*—(i) *Small business issuers.* A registrant that qualifies as "small business issuer," as defined by Item 10(a)(1) of Regulation S-B [17 CFR 228.10(a)(1)], will be deemed to comply with this item if it provides the information required by paragraph (b) (Summary Compensation Table), paragraphs (c)(1) and (c)(2)(i)–(v) (Option/SAR Grants Table), paragraph (d) (Aggregated Option/SAR Exercise and Fiscal Year-End Option/SAR Value Table), paragraph (e) (Long-Term Incentive Plan Awards Table), paragraph (g) (Compensation of Directors), paragraph (h) (Employment Contracts, Termination of Employment and Change in Control Arrangements) and paragraph (i) (1) and (2) (Report on Repricing of Options/SARs) of this item.

(ii) *Foreign private issuers.* A foreign private issuer will be deemed to comply with this item if it provides the information required by Items 11 and 12 of Form 20-F [17 CFR 249.220f], with more detailed information provided if otherwise made publicly available.

(2) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this item, and directors covered by paragraph (g) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(5) of this item, all such compensation shall be reported pursuant to this item, even if also called for by another requirement, including transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) The registrant's Chief Executive Officer or any individual acting in a similar capacity ("CEO") at the end of the last completed fiscal year, regardless of compensation level; and

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year.

**Instructions to Item 402(a)(3)**

1. *Determination of Most Highly Compensated Executive Officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii) (A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii) (A) and (B) of this item: *Provided, however,* That no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed $100,000.

2. *Inclusion of Executive Officer of Subsidiary.* It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. *See* Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

3. *Exclusion of Executive Officer due to Unusual or Overseas Compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant's most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as

a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (b) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the CEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the CEO) served as an executive officer of the registrant (whether or not in the same position) during any part of a fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Transactions with third parties reported under item 404.* This item includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. No information need be given in response to any paragraph of this item, other than paragraph (j), as to any such third-party transaction if the transaction has been reported in response to Item 404 of Regulation S–K (§ 229.404).

(6) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives required to be reported in that table or column in any fiscal year covered by that table.

(7) *Definitions.* For purposes of this item:

(i) The term *stock appreciation rights (SARs)* refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock or restricted stock units, phantom stock, stock options, SARs, stock options in tandem with SARs, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *long-term incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans.

(8) *Location of specified information.* The information required by paragraphs (i), (k) and (l) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(9) *Liability for specified information.* The information required by paragraphs (k) and (l) of this item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulations 14A or 14C [17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*], other than as provided in this item, or to the liabilities of section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

(b) *Summary Compensation Table.* (1) *General.* The information specified in paragraph (b)(2) of this item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, shall be provided in a Summary Compensation Table, in the tabular format specified below.

SUMMARY COMPENSATION TABLE

| Name and principal position | Year | Annual compensation | | | Long term compensation | | | All other compensation ($) |
|---|---|---|---|---|---|---|---|---|
| | | | | | Awards | | Payouts | |
| | | Salary ($) | Bonus ($) | Other annual compensation ($) | Restricted stock award(s) ($) | Options/ SARs (#) | LTIP payouts ($) | |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) | (i) |
| CEO | | | | | | | | |
| A | | | | | | | | |
| B | | | | | | | | |
| C | | | | | | | | |
| D | | | | | | | | |

(2) The Table shall include:

(i) The name and principal position of the executive officer (column (a));

(ii) Fiscal year covered (column (b));

(iii) Annual compensation (columns (c), (d) and (e)), including:

(A) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(B) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d)); and

**Instructions to Item 402(b)(2)(iii) (A) and (B)**

1. Amounts deferred at the election of a named executive officer, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in the salary column (column (c)) or bonus column (column (d)), as appropriate, for the fiscal year in which earned. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, that fact must be disclosed in a footnote and such amount must be disclosed in the subsequent fiscal year in the appropriate column for the fiscal year in which earned.

2. For stock or any other form of non-cash compensation, disclose the fair market value

at the time the compensation is awarded, earned or paid.

3. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive in lieu of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation in lieu of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (i.e., restricted stock awards (column (f)); options or SARs (column (g)); all other compensation (column (i)), or, if made pursuant to a long-term incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Long-Term Incentive Plan Table (required by paragraph (e) of this item) where the award is reported.

(C) The dollar value of other annual compensation not properly categorized as salary or bonus, as follows (column (e)):

(*1*) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is the lesser of either $50,000 or 10% of the total of annual salary and bonus reported for the named executive officer in columns (c) and (d);

(*2*) Above-market or preferential earnings on restricted stock, options, SARs or deferred compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(*3*) Earnings on long-term incentive plan compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(*4*) Amounts reimbursed during the fiscal year for the payment of taxes; and

(*5*) The dollar value of the difference between the price paid by a named executive officer for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise), and the fair market value of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant.

**Instructions to Item 402(b)(2)(iii)(C)**

1. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a named executive officer must be identified by type and amount in a footnote or accompanying narrative discussion to column (e).

2. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Interest on deferred or long-term compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, [26 U.S.C. 1274(d)]) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate.

4. Dividends (and dividend equivalents) on restricted stock, options, SARs or deferred compensation denominated in stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included.

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) The dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, including share units (calculated by multiplying the closing market price of the registrant's unrestricted stock on the date of grant by the number of shares awarded) (column (f));

(B) The sum of the number of stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

(C) The dollar value of all payouts pursuant to long-term incentive plans ("LTIPs") as defined in paragraph (a)(7)(iii) of this item (column (h)).

**Instructions to Item 402(b)(2)(iv)**

1. Awards of restricted stock that are subject to performance-based conditions on vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to paragraph (e) of this item instead of in column (f). If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in column (h).

2. The registrant shall, in a footnote to column (f), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. Value shall be calculated as specified in paragraph (b)(2)(iv)(A) of this item;

b. For any restricted stock award that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in the column.

3. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or freestanding SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall include the number of options or freestanding SARs so repriced as Stock Options/SARs granted and required to be reported in column (g).

4. If any specified performance target, goal or condition to payout was waived with respect to any amount included in LTIP payouts reported in column (h), the registrant shall so state in a footnote to column (h).

(v) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Any compensation reported in this column for the last completed fiscal year shall be identified and quantified in a footnote. Such compensation shall include, but not be limited to:

(A) The amount paid, payable or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant or a change in the executive officer's responsibilities following such a change in control;

(B) The dollar value of above-market or preferential amounts earned on restricted stock, options, SARs or deferred compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during the period, or payable during the period but deferred at the election of a named executive officer, this information shall be reported as Other Annual Compensation in column (e). See Instructions 3 and 4 to paragraph 402(b)(2)(iii)(C) of this item;

(C) The dollar value of amounts earned on long-term incentive plan compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during that period, or payable during that period at the election of the named executive officer, this information shall be reported as Other Annual Compensation in column (e);

(D) Annual registrant contributions or other allocations to vested and unvested defined contribution plans; and

(E) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year

with respect to term life insurance for the benefit of a named executive officer, and, if there is any arrangement or understanding, whether formal or informal, that such executive officer has or will receive or be allocated an interest in any cash surrender value under the insurance policy, either:

(*1*) The full dollar value of the remainder of the premiums paid by, or on behalf of, the registrant; or

(*2*) If the premiums will be refunded to the registrant on termination of the policy, the dollar value of the benefit to the executive officer of the remainder of the premium paid by, or on behalf of, the registrant during the fiscal year. The benefit shall be determined for the period, projected on an actuarial basis, between payment of the premium and the refund.

**Instructions to Item 402(b)(2)(v)**

1. LTIP awards and amounts received on exercise of options and SARs need not be reported as All Other Compensation in column (i).

2. Information relating to defined benefit and actuarial plans should not be reported pursuant to paragraph (b) of this item, but instead should be reported pursuant to paragraph (f) of this item.

3. Where alternative methods of reporting are available under paragraph (b)(2)(v)(E) of this item, the same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to column (i).

**Instruction to Item 402(b)**

Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

(c) *Option/SAR Grants Table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs), and freestanding SARs made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

OPTION/SAR GRANTS IN LAST FISCAL YEAR

| Individual Grants | | | | | Potential realizable value at assumed annual rates of stock price appreciation for option term | | Alternative to (f) and (g): Grant date value |
|---|---|---|---|---|---|---|---|
| Name | Options/ SARs Granted (#) | Percent of total options/ SARs granted to employees in fiscal year | Exercise or base price ($/Sh) | Expiration date | 5% ($) | 10% ($) | Grant date present value $ |
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (f) |
| CEO | | | | | | | |
| A | | | | | | | |
| B | | | | | | | |
| C | | | | | | | |
| D | | | | | | | |

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) The number of options and SARs granted (column (b));

(iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));

(iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant;

(v) The expiration date of the options or SARs (column (e)); and

(vi) Either (A) the potential realizable value of each grant of options or freestanding SARs or (B) the present value of each grant, as follows:

(A) The potential realizable value of each grant of options or freestanding SARs, assuming that the market price of the underlying security appreciates in value from the date of grant to the end of the option or SAR term, at the following annualized rates:

(*1*) 5% (column (f));

(*2*) 10% (column (g)); and

(*3*) If the exercise or base price was below the market price of the underlying security at the date of grant, provide an additional column labeled 0%, to show the value at grant-date market price; or

(B) The present value of the grant at the date of grant, under any option pricing model (alternative column (f)).

**Instructions to Item 402(c)**

1. If more than one grant of options and/or freestanding SARs was made to a named executive officer during the last completed fiscal year, a separate line should be used to provide disclosure of each such grant. However, multiple grants during a single fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date, and the same performance vesting thresholds, if any. A single grant consisting of options and/or freestanding SARs shall be reported as separate grants with respect to each tranche with a different exercise and/or base price, performance vesting threshold, or expiration date.

2. Options or freestanding SARs granted in connection with an option repricing transaction shall be reported in this table. See Instruction 3 to paragraph (b)(2)(iv) of this item.

3. Any material term of the grant, including but not limited to the date of exercisability, the number of SARs, performance units or other instruments granted in tandem with options, a performance-based condition to exercisability, a reload feature, or a tax-reimbursement feature, shall be footnoted.

4. If the exercise or base price is adjustable over the term of any option or freestanding SAR in accordance with any prescribed standard or formula, including but not limited to an index or premium price provision, describe the following, either by footnote to column (c) or in narrative accompanying the Table: (a) the standard or formula; and (b) any constant assumption made by the registrant regarding any adjustment to the exercise price in calculating the potential option or SAR value.

5. If any provision of a grant (other than an antidilution provision) could cause the exercise price to be lowered, registrants must clearly and fully disclose these provisions and their potential consequences either by a footnote or accompanying textual narrative.

6. In determining the grant-date market or base price of the security underlying options or freestanding SARs, the registrant may use either the closing market price per share of

the security, or any other formula prescribed for the security.

7. The potential realizable dollar value of a grant (columns (f) and (g)) shall be the product of:

(a) The difference between:

(i) The product of the per-share market price at the time of the grant and the sum of 1 plus the adjusted stock price appreciation rate (the assumed rate of appreciation compounded annually over the term of the option or SAR); and

(ii) The per-share exercise price of the option or SAR; and

(b) The number of securities underlying the grant at fiscal year-end.

8. Registrants may add one or more separate columns using the formula prescribed in Instruction 7 to paragraph (c) of this item, to reflect the following:

a. The registrant's historic rate of appreciation over a period equivalent to the term of such options and/or SARs;

b. 0% appreciation, where the exercise or base price was equal to or greater than the market price of the underlying securities on the date of grant; and

c. N% appreciation, the percentage appreciation by which the exercise or base price exceeded the market price at grant. Where the grant included multiple tranches with exercise or base prices exceeding the market price of the underlying security by varying degrees, include an additional column for each additional tranche.

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation should be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes option pricing model, the description may be limited to a simple indication of the use of such pricing model. In the event another valuation method were to be used, the registrant would be required to describe the methodology as well as any material assumptions.

(d) *Aggregated option/SAR exercises and fiscal year-end option/SAR value table.* (1) The information specified in paragraph (d)(2) of this item, concerning each exercise of stock options (or tandem SARs) and freestanding SARs during the last completed fiscal year by each of the named executive officers and the fiscal year-end value of unexercised options and SARs, shall be provided on an aggregated basis in the tabular format specified below:

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

| Name | Shares acquired on exercise (#) | Value Realized ($) | Number of unexercised options/SARs at fiscal year-end (#) | Value of unexercised in-the-money options/SARs at fiscal year-end ($) |
|---|---|---|---|---|
| | | | Exercisable/ unexercisable | Exercisable/ uexercisable |
| (a) | (b) | (c) | (d) | (e) |
| CEO | | | | |
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |

(2) The table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares received upon exercise, or, if no shares were received, the number of securities with respect to which the options or SARs were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise (column (c));

(iv) The total number of unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

(v) The aggregate dollar value of in-the-money, unexercised options and SARs held at the end of the fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (e)).

**Instructions to Item 402(d)(2)**

1. Options or freestanding SARs are in-the-money if the fair market value of the underlying securities exceeds the exercise or base price of the option or SAR. The dollar values in columns (c) and (e) are calculated by determining the difference between the fair market value of the securities underlying the options or SARs and the exercise or base price of the options or SARs at exercise or fiscal year-end, respectively.

2. In calculating the dollar value realized upon exercise (column (c)), the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes, shall not be included. Payments by the registrant in reimbursement of tax obligations incurred by a named executive officer are required to be disclosed in accordance with paragraph (b)(2)(iii)(C)(*4*) of this item.

(e) *Long-Term Incentive Plan ("LTIP") awards table.* (1) The information specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

| Name | Number of shares, units or other rights (#) | Perform-ance or other period until maturation or payout | Estimated future payouts under non-stock price-based plans | | |
|---|---|---|---|---|---|
| | | | Threshold ($ or #) | Target ($ or #) | Maximum ($ or #) |
| (a) | (b) | (c) | (d) | (e) | (f) |
| CEO | | | | | |
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |

(2) The Table shall include:

(i)The name of the executive officer (column (a));

(ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (b));

(iii) The performance or other time period until payout or maturation of the award (column (c)); and

(iv) For plans not based on stock price, the dollar value of the estimated payout or range of estimated payouts under the award (threshold, target and maximum amount), whether such award is denominated in stock or cash (columns (d) through (f)).

**Instructions to Item 402(e)**

1. For purposes of this paragraph, the term "long-term incentive plan" or "LTIP" shall be defined in accordance with paragraph (a)(7)(iii) of this item.

2. Describe in a footnote or in narrative text accompanying this table the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. Registrants are not required to disclose any factor, criterion or performance-related or other condition to payout or maturation of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant's competitive position.

3. Separate disclosure shall be provided in the Table for each award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If awards are made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such award was made.

4. For column (d), "threshold" refers to the minimum amount payable for a certain level of performance under the plan. For column (e), "target" refers to the amount payable if the specified performance target(s) are reached. For column (f), "maximum" refers to the maximum payout possible under the plan.

5. In column (e), registrants must provide a representative amount based on the previous fiscal year's performance if the target award is not determinable.

6. A tandem grant of two instruments, only one of which is pursuant to a LTIP, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

(f) *Defined benefit or actuarial plan disclosure*—(1) *Pension plan table.* (i) For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide a separate Pension Plan Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications in the format specified below.

PENSION PLAN TABLE

| Remuneration | Years of service | | | | |
|---|---|---|---|---|---|
| | 15 | 20 | 25 | 30 | 35 |
| 125,000 | | | | | |
| 150,000 | | | | | |
| 175,000 | | | | | |
| 200,000 | | | | | |
| 225,000 | | | | | |
| 250,000 | | | | | |
| 300,000 | | | | | |
| 400,000 | | | | | |
| 450,000 | | | | | |
| 500,000 | | | | | |

(ii) Immediately following the Table, the registrant shall disclose:

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the compensation reported in the Summary Compensation Table required by paragraph (b)(2) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from that set forth in the Summary Compensation Table;

(B) The estimated credited years of service for each of the named executive officers; and

(C) A statement as to the basis upon which benefits are computed (e.g., straight-life annuity amounts), and whether or not the benefits listed in the Pension Plan Table are subject to any deduction for Social Security or other offset amounts.

(2) *Alternative pension plan disclosure.* For any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, the registrant shall state in narrative form:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the named executive officers.

**Instructions to Item 402(f)**

1. *Pension Levels.* Compensation set forth in the Pension Plan Table pursuant to paragraph (f)(1)(i) of this item shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest compensation level in the Pension Plan Table an amount equal to 120% of the amount of covered compensation of the most highly compensated individual named in the Summary Compensation Table required by paragraph (b)(2) of this item.

2. *Normal Retirement Age.* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction due to age.

(g) *Compensation of Directors*—(1) *Standard arrangements.* Describe any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last completed fiscal year for any service provided as a director, stating the amount paid and the name of the director.

**Instruction to Item 402(g)(2)**

The information required by paragraph (g)(2) of this item shall include any arrangement, including consulting contracts, entered into in consideration of the director's service on the board. The material terms of any such arrangement shall be included.

(h) *Employment contracts and termination of employment and change-in-control arrangements.* Describe the terms and conditions of each of the following contracts or arrangements:

(1) Any employment contract between the registrant and a named executive officer; and

(2) Any compensatory plan or arrangement, including payments to be received from the registrant, with respect to a named executive officer, if such plan or arrangement results or will result from the resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries or from a change-in-control of the registrant or a change in the named executive officer's responsibilities following a change-in-control and the amount involved, including all periodic payments or installments, exceeds $100,000.

(i) *Report on repricing of options/SARs.* (1) If at any time during the last completed fiscal year, the registrant, while a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a), 78*o*(d)], has adjusted or amended the exercise price of stock options or SARs previously awarded to any of the named executive officers, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall provide the information specified in paragraphs (i)(2) and (i)(3) of this item.

(2) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) shall explain in reasonable detail any such repricing of options and/or SARs held by a named executive officer in the last completed fiscal year, as well as the basis for each such repricing.

(3)(i) The information specified in paragraph (i)(3)(*ii*) of this item, concerning all such repricings of options and SARs held by any executive officer during the last ten completed fiscal years, shall be provided in the tabular format specified below:

TEN-YEAR OPTION/SAR REPRICINGS

| Name | Date | Number of options/SARs repriced or amended (#) | Market price of stock at time of repricing or amendment ($) | Exercise price at time of repricing or amendment ($) | New exercise price ($) | Length of original option term remaining at date of repricing or amendment |
|---|---|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) |
| | | | | | | |

(ii) The Table shall include, with respect to each repricing:

(A) The name and position of the executive officer (column (a));

(B) The date of each repricing (column (b));

(C) The number of replacement or amended options or SARs (column (c));

(D) The per-share market price of the underlying security at the time of repricing (column (d));

(E) The original exercise price or base price of the cancelled or amended option or SAR (column (e));

(F) The per-share exercise price or base price of the replacement option or SAR (column (f)); and

(G) The amount of time remaining before the replaced or amended option or SAR would have expired (column (g)).

**Instructions to Item 402(i)**

1. The required report shall be made over the name of each member of the registrant's compensation committee, or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors.

2. A replacement grant is any grant of options or SARs reasonably related to any prior or potential option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms; the grant of new options or SARs in tandem with previously granted options or SARs that will operate to cancel the previously granted options or SARs upon exercise; repricing of previously granted options or SARs; or otherwise. If a corresponding original grant was canceled in a prior year, information about such grant nevertheless must be disclosed pursuant to this paragraph.

3. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote or accompanying textual narrative.

4. This paragraph shall not apply to any repricing occurring through the operation of:

a. A plan formula or mechanism that results in the periodic adjustment of the option or SAR exercise or base price;

b. A plan antidilution provision; or

c. A recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

5. Information required by paragraph (i)(3) of this item shall not be provided for any repricings effected before the registrant became a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act.

(j) *Additional information with respect to Compensation Committee Interlocks and Insider Participation in compensation decisions.* Under the caption "Compensation Committee Interlocks and Insider Participation,"

(1) The registrant shall identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(i) Was, during the fiscal year, an officer or employee of the registrant or any of its subsidiaries;

(ii) Was formerly an officer of the registrant or any of its subsidiaries; or

(iii) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 of Regulations S–K (§ 229.404). In this event, the disclosure required by Item 404 shall accompany such identification.

(2) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant or any of its subsidiaries, and any former officer of the registrant or any of its subsidiaries, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(3) The registrant shall describe any of the following relationships that existed during the last completed fiscal year:

(i) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(ii) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(iii) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(4) Disclosure required under paragraph (j)(3) of this item regarding any compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 (§ 229.404) with respect to that person.

**Instruction to Item 402(j)**

For purposes of this paragraph, the term "entity" shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

(k) *Board compensation committee report on executive compensation.* (1) Disclosure of the compensation committee's compensation policies applicable to the registrant's executive officers (including the named executive officers), including the specific relationship of corporate performance to executive compensation, is required with respect to compensation reported for the last completed fiscal year.

(2) Discussion is required of the compensation committee's bases for the CEO's compensation reported for the last completed fiscal year, including the factors and criteria upon which the CEO's compensation was based. The committee shall include a specific discussion of the relationship of the registrant's performance to the CEO's compensation for the last completed fiscal year, describing each measure of the registrant's performance, whether qualitative or quantitative, on which the CEO's compensation was based.

(3) The required disclosure shall be made over the name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, entire board of directors). If the board of directors modified or rejected in any material way any action or recommendation by such committee with respect to such decisions in the last completed fiscal year, the disclosure must so indicate and explain the reasons for the board's actions, and be made over the names of all members of the board.

**Instructions to Item 402(k)**

1. Boilerplate language should be avoided in describing factors and criteria underlying awards or payments of executive compensation in the statement required.

2. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the committee (or board), or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the registrant.

(l) Performance graph. (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing (i) the sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period) with

(i) the cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or NASDAQ market or are of comparable market capitalization; *Provided, however,* That if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of:

(A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (l)(1) of this item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (l)(1)(ii)(A) of this item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; provided, however, that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return

with that of both the newly selected index and the index used in the immediately preceding fiscal year.

**Instructions to Item 402(l)**

1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (l)(1) of this item; *Provided, however,* That if the registrant constructs its own peer group index under paragraph (l)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

(a) The closing price at the measurement point should be converted into the base amount, with cumulative returns for each subsequent fiscal year measured as a change from that base; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity, so long as the registrant's compensation committee (or other board committee performing equivalent functions or in the absence of any such committee the entire board of directors) describes the link between that measure and the level of executive compensation in the statement required by paragraph (k) of this Item.

7. By amending § 229.403 to revise paragraph (b) above the table to read as follows:

**§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.**

(a) * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d–3(d)(1) of this chapter.

* * * * *

8. By amending § 229.601 to revise paragraph (b)(10)(iii)(A) to read as follows:

**§ 229.601 (Item 601) Exhibits.**

* * * * *

(b) *Description of exhibits.* * * *

(10) *Material contracts.* * * *

(iii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3) (§ 229.402(a)(3)), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read as follows:

**Authority:** U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

10. By amending § 240.14a–101 by revising Items 8 and 10 of Schedule 14A to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

*Item 8. Compensation of directors and executive officers.* Furnish the information required by Item 402 (§ 229.402 of this chapter) of Regulation S–K if action is to be taken with regard to:

(a) The election of directors;

(b) Any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or executive officer of the registrant will participate;

(c) Any pension or retirement plan in which any such person will participate; or

(d) The granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis.

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered under the Investment Company Act of 1940, furnish the information in Item 402(g) of Regulation S–K (§ 229.402(g) of this chapter) and the information concerning compensation of directors and officers that is required to be included in the company's registration statement form under the Investment Company Act in lieu of other compensation information required by Item 402.

*Instruction.*

If an otherwise reportable compensation plan became subject to such requirements because of an acquisition or merger and, within one year of the acquisition or merger, such plan was terminated for purposes of prospective eligibility, the registrant may furnish a description of its obligation to the designated individuals pursuant to the compensation plan. Such description may be furnished in lieu of a description of the compensation plan in the proxy statement.

* * * * *

*Item 10. Compensation Plans.* If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

| Plan name | | |
|---|---|---|
| Name and position | Dollar value ($) | Number of units |
| CEO | | |
| A | | |
| B | | |
| C | | |
| D | | |
| Executive Group | | |
| Non-Executive Director Group. | | |
| Non-Executive Officer Employee Group. | | |

(ii) The table required by paragraph (a)(2)(i) of this Item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

**Instruction to New Plan Benefits Table**

Additional columns should be added for each plan with respect to which security holder action is to be taken.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this Item:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item, state the nature of the amendments which can be so made.

(b)(1) *Additional information regarding specified plans subject to security holder action.* With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (f)(1) of Item 402 of Regulation S–K (§ 229.402(f)(1) of this chapter).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the registrant; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

*Instructions*

1. The term "plan" as used in this Item means any plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are filed pursuant to paragraph (c) of section 240.14a-6.

4. Paragraph (b)(2)(ii) does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission shall be informed, as supplemental information, when the proxy statement is first filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted.

Note:—These forms will not appear in the Code of Federal Regulations.

**§ 249.310 [Amended]**

12. By amending Form 10–K (§ 249.310) by removing the instruction to Item 11 of Form 10–K, and by revising Item 14(a)(3) of Form 10–K to read as follows:

**Form 10–K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

* * * * *

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8–K.

(a) List the following documents filed as a part of the report:

* * * * *

3. Those exhibits required by Item 601 of Regulation S–K (17 CFR 229.601 of this chapter) and by paragraph (c) below. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to Item 14(c) of this report.

* * * * *

13. By amending Form 10–KSB (§ 249.310(b)) by revising Item 13 to read as follows:

**Form 10–KSB Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934**

* * * * *

Item 13. Exhibits, List and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–B. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. See Exchange Act Rule 12b-23 (§ 240.12b-23 of this chapter). Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form.

* * * * *

By the Commission.

Dated: October 16, 1992.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–25562 Filed 10–19–92; 8:45 am]

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Dayton Aviation Heritage Preservation Act of 1992 (Oct. 16, 1992; 106 Stat. 2141; 8 pages)

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An act to provide for the withdrawal of most favored nation status from Serbia and Montenegro and to provide for the restoration of such status if certain conditions are fulfilled (Oct. 16, 1992; 106 Stat. 2149; 2 pages)

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To designate October 1992 as "Polish-American Heritage Month" (Oct. 16, 1992; 106 Stat. 2170; 2 pages)

**S.J. Res. 319/P.L. 102-425**

To designate the second Sunday in October of 1992 as "National Children's Day" (Oct. 16, 1992; 106 Stat. 2172; 2 pages)

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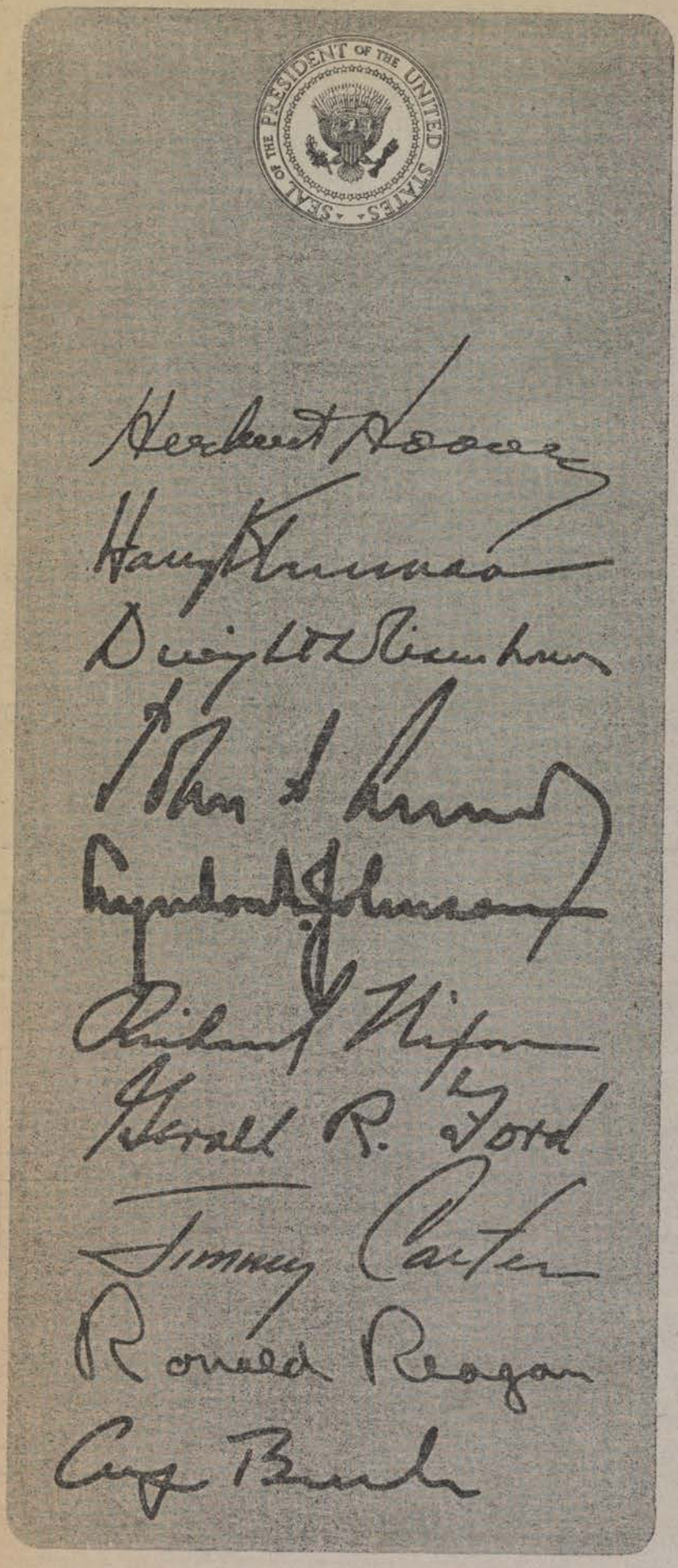


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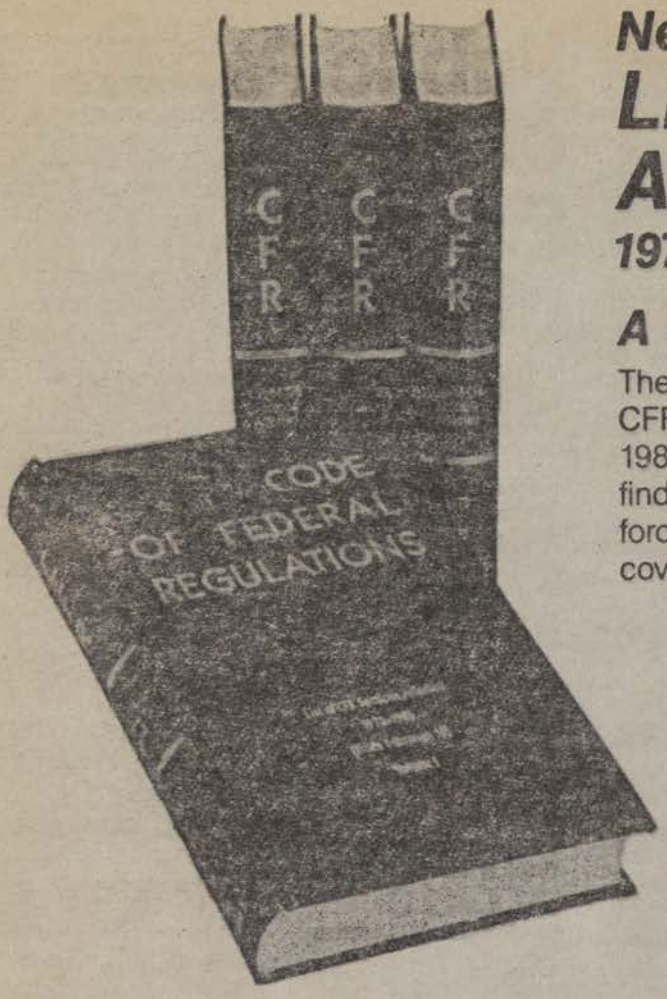


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